

Secretarial Review Draft

REGULATORY IMPACT REVIEW/INITIAL REGULATORY FLEXIBILITY ANALYSIS

For proposed

AMENDMENT 71a

to the Fishery Management Plan for the Groundfish Fishery of the
Bering Sea and Aleutian Islands Area

**To implement policy and administrative changes to the
Western Alaska Community Development Quota Program**

Abstract: This Regulatory Impact Review/Initial Regulatory Flexibility Analysis analyzes the impacts of allowing the Community Development Quota (CDQ) groups participating in the western Alaska CDQ Program to use a portion of their royalties or revenues to fund non-fisheries related projects. The proposed action would implement a policy change regarding the general purpose of the CDQ Program and the restriction on the types of allowable investments by the CDQ groups. The current purpose of the CDQ Program is to help western Alaska communities diversify their local economies by investing in commercial fisheries and to provide new opportunities for stable, long-term employment. The original Council guidance for implementing the CDQ Program focused on using the CDQ allocations to develop a self-sustaining fisheries-based economy, thus the current program limits the CDQ groups to spending CDQ revenues on fisheries-related projects, with very limited exceptions. This amendment package proposes several alternatives to the current fisheries-related restriction, including allowing the CDQ groups to spend a limited amount of their revenues on non-fisheries related projects.

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1.0 INTRODUCTION

Executive Order (E.O.) 12866 requires that a Regulatory Impact Review (RIR) be conducted for all Federal regulatory actions. The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

This analysis addresses the requirements of E.O. 12866 to provide adequate information to determine whether an action is "significant" under E.O. 12866.

E. O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

E.O. 12866 requires a description of the purpose and need for the proposed action, as well as a description of alternative actions which may address the problem. The purpose and need, as well as the problem statement guiding the action, are included in **Section 1** of this document. The description of the alternatives and options under consideration is also included in this section. **Section 2** contains a brief overview of the CDQ Program, including a description of the eligible communities and the structural and financial organization of the CDQ groups. **Section 3** describes the CDQ allocation process and the State and Federal roles in that process. **Section 4** describes the regulatory, policy, and legal issues associated with the alternatives and contains an analysis of the social and economic impacts of the proposed alternatives, including the Council's **preferred alternative**.

Section 5 addresses the requirements of the Magnuson-Stevens Fisheries Management and Conservation Act (MSA), the Regulatory Flexibility Act (RFA), and other applicable Federal laws. The RFA requires analysis of impacts on small businesses, non-profit organizations, or governmental jurisdictions which may result from regulations being proposed. The requirements of the RFA are outlined in Section 5.4.

1.1 Purpose and Need for the Action

The proposed action would implement a policy change regarding the general purpose of the CDQ Program and the restriction on the types of allowable investments by the CDQ groups. The CDQ Program was created by the North Pacific Fishery Management Council (Council) in 1992, as part of the inshore/offshore allocations of pollock in the Bering Sea and Aleutian Islands (BSAI), and the halibut and sablefish allocations which were created as part of the Individual Fishing Quota (IFQ) Program. The Council established the CDQ Program to provide western Alaska coastal communities an opportunity to participate in the BSAI fisheries that had been, in effect, foreclosed to them, because of the high capital investment needed to enter these fisheries.

The purpose of the CDQ Program is to help western Alaska communities diversify their local economies by investing in commercial fisheries and to provide new opportunities for stable, long-term employment. The original Council guidance for implementing the CDQ Program focused on using the CDQ allocations to develop a self-sustaining fisheries-based economy, thus the current program limits the CDQ groups to spending CDQ revenues on fisheries related projects, with very limited exceptions. This amendment package proposes several alternatives to the current fisheries-related restriction, including allowing the CDQ groups to spend a limited amount of their revenues on non-fisheries related projects.

Since 1992, the CDQ Program has expanded several times and now includes allocations of pollock, halibut, sablefish, crab, all of the remaining groundfish species (cod, Atka mackerel, flatfish, and rockfish), and the prohibited species (i.e., as bycatch allowances for salmon, halibut, and crab). The Sustainable Fisheries Act of 1996, which amended the MSA, institutionalized the program as part of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (FMP). While originally set at 7.5 percent, Congress increased the pollock CDQ allocation in 1998, to 10 percent under the American Fisheries Act. The percentage of other catch limits allocated to the CDQ Program ("CDQ reserves") is determined by the MSA for crab¹ (7.5 percent), the BSAI FMP for all other groundfish and prohibited species (7.5 percent, except 20percent for sablefish), and 50 CFR 679 for halibut (20 percent to 100 percent). The most recent CDQ allocations, in 2004, allocated approximately 187,000 metric tons of groundfish, over 2 million pounds of halibut, and 1.7 million pounds of crab to the CDQ Program. The six CDQ groups had total revenues in 2002, of approximately \$70 million, primarily from pollock royalties. Since 1992, the CDQ groups have accumulated assets worth approximately \$227 million (as of 2002), including ownership of small local processing plants, catcher vessels, and catcher/processors that participate in the groundfish, crab, salmon, and halibut fisheries.

The CDQ Program has surpassed the expectations of many in accomplishing its goals, and the CDQ groups have gained valuable experience in managing their fisheries and related investments. The groups have used their CDQ allocations to develop local fisheries, invest in a wide range of fishing businesses outside the CDQ communities, and provide residents with education, training, and job opportunities in the fishing industry. The CDQ groups have also increased their influence in Alaska fisheries policy issues through their participation in the Council process and other regional fora. For at least some of the CDQ groups, this maturity has brought the desire for increased autonomy and reduced government oversight. Particular areas of concern include the need to: clearly define and limit government oversight; improve the objectivity and consistency of the CDQ allocation process; and reevaluate the restriction on spending CDQ revenues on non-fisheries related projects.

¹The Council's action on BSAI Crab Rationalization (October 2002) increased the crab allocations to the CDQ Program from 7.5 percent to 10 percent. This increase applies to all CDQ crab allocations except for Norton Sound red king crab. The action also created CDQ allocations of Adak red king crab and Western Aleutian Islands brown king crab. Implementation is expected in 2005.

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Given the rapid growth and evolving nature of the program, since its inception in 1992, the Council determined that an analysis of some of these general policy issues surrounding the program was warranted. This analysis constitutes a review of the requirement that CDQ revenues only be spent on fisheries-related projects, and proposes several alternatives to the status quo. This issue was raised by the CDQ groups and the National Research Council, due to concern that there may come a time when the fisheries restriction on investments will force the CDQ groups to make investments that may not promote economic diversity and sustainability at the local community level, or will force them to undertake less than ideal investments. In addition, there may be more viable investment opportunities in non-fisheries businesses in some CDQ communities that may better serve to promote overall economic development in the community. The NRC believes that adding flexibility will better suit the long-term goal of the program, to develop economic opportunities for communities in western Alaska.

A review of this issue will help ensure that the CDQ Program is appropriately structured and administered to adapt to changes in the fisheries, and will continue to benefit eligible western Alaska communities to the fullest extent possible. The following section details the original Council intent during the development of the CDQ Program, as well as several events that have occurred since implementation, which have spurred the need to consider policy changes, specifically with regard to increasing the flexibility in the rules governing the allocation of benefits in the CDQ Program. This brief history helps provide the context for the policy change considered in this amendment.

1.2 Background

1.2.1 Council Action in 1992

The CDQ Program is jointly managed by NMFS and the State of Alaska, based on a program design developed by the Council and implemented by NMFS in 1992. Currently, 65 communities are eligible to participate in the CDQ Program, representing about 27,000 people in western Alaska. These communities are located within 50 nautical miles of the Bering Sea coast or on an island in the Bering Sea and are predominantly populated by Alaska Natives. The eligible communities have formed six non-profit corporations (CDQ groups) to manage and administer the CDQ allocations, investments, and economic development projects. The eligibility criteria and organizational structure of the CDQ groups are detailed in Section 2.

As stated in the BSAI FMP (Section 5.4.7.4), the purpose of the CDQ Program is as follows:

PURPOSE AND SCOPE. The Western Alaska Community Development Quota Program is established to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands groundfish fisheries, to expand their participation in salmon, herring, and other nearshore fisheries, and to help alleviate the growing social economic crisis within these communities...

Through the creation and implementation of community development plans, western Alaska communities will be able to diversify their local economies, provide community residents with new opportunities to obtain stable, long-term employment, and participate in the Bering Sea/Aleutian Islands fisheries which have been foreclosed to them because of the high capital investment needed to enter the fishery.

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The FMP language above, which outlines the intent of the program, was based on a 1992 document entitled “Western Alaska Community Development Quota Program Criteria and Procedures.” This document, developed by the State of Alaska, was adopted by the Council with several revisions and provided the basis for the initial Federal regulations governing the program. The corresponding NMFS regulations (50 CFR 679.1(e)) stating the goal of the program are as follows:

The goals and purpose of the CDQ Program are to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries-related economy.

The Federal regulations implement the Council’s intent for the program, specifically the concept that the revenue generated by the CDQ allocations is to be spent on fisheries-related investments and projects to benefit eligible CDQ communities. The Council’s original intent, based upon transcripts from its 1992 action to approve the CDQ Program and the criteria and procedures document referenced previously, was to encourage eligible communities to develop self-sufficient economies based on fishing opportunities. The Council discussions clearly stated that the economic opportunities provided were to be in the fishing industry, and the Federal regulations that followed were based upon this direction.

The program was originally structured as a joint program of the Secretary of Commerce and the Governor of the State of Alaska, and was stated as such in the language amending the BSAI FMP (Section 5.4.7.4). Through the Council’s action, NMFS was directed to hold the designated percent of the annual TAC of groundfish for each management area in the BSAI for the community quota, to be released to eligible communities who submit a fisheries development plan approved by the Governor of Alaska. The Governor forwards any recommendations on the plan to the Secretary, following consultation with the Council. Upon receipt of such recommendations, the Secretary releases portions of the CDQ reserve to the eligible groups. The FMP amendment also expresses the intent that the Governor of Alaska would initially determine which communities were eligible for the program.

The documentation establishing the criteria and procedures for the CDQ Program in 1992, outlined the State’s role in the allocation process and made it clear that the daily management of the program was the responsibility of the State. Transcripts from the Council’s action confirm that the Council and Federal role was to include general oversight responsibilities, but that the managing entity of the CDQ Program would primarily be the State. The program was designed as such, because, although it is ultimately a Council and Secretarial program, the Council believed the State and the communities themselves would be better suited to evaluating community needs and effectively managing the program.

As a result, the State is primarily responsible for the day-to-day administration and oversight of the economic development aspects of the program and for reviewing Community Development Plans (CDPs) and recommending CDQ allocations. The State works with the CDQ groups to develop CDPs that describe how the CDQ allocations will be used to benefit the eligible communities and to modify this plan as new projects develop. The specific criteria used to evaluate the CDPs and to make CDQ allocation recommendations are implemented in State regulations. Neither the Council nor NMFS provides the State with detailed instructions about how to evaluate the CDPs or how to balance the various evaluation criteria.

The Federal role in the program has been relatively limited with respect to the CDQ allocations and administration of the economic development aspects of the program. NMFS is primarily responsible for the fisheries management aspects of the groundfish and halibut CDQ fisheries and for broad oversight of the

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program. The role of NMFS in the allocation of quota to the eligible communities has been limited to reviewing the record provided by the State for its recommendations and determining whether the State considered relevant factors and articulated a satisfactory explanation for its action. NMFS approves the State's recommendations if it finds that the State followed the process requirements described in the regulations and provided a reasonable explanation for its allocation recommendations.

The current administration and oversight of the CDQ program are therefore based on the above interpretation of the Council's intent, and regulations have been implemented consistent with that interpretation. The policy issue under consideration in this amendment is related to clarifying and/or modifying that intent, specifically the restriction on fisheries-related investments. The remainder of this section focuses on several actions that have occurred, subsequent to the Council's original motion in 1992, that have contributed to the decision to consider fine-tuning the program as it evolves.

1.2.2 National Research Council Report

Congress recognized the need to evaluate the CDQ Program in its 1996 amendments to the MSA. It requested that the National Research Council (NRC) prepare a comprehensive report on the performance and effectiveness of the CDQ Program. The 1999 NRC report,² while concluding that the CDQ Program "appears on track to accomplishing the goals set out in the authorizing legislation," makes several recommendations to improve the program, many of which are at issue in this analysis. The NRC recommendations included, but were not limited to, the following:

- simplification of the evaluation criteria for the CDQ allocation process
- consideration of a separate foundation quota (based on equity issues) and performance quota (based on good management)
- clarification of the purpose of State oversight
- removal of the requirement that all revenues from CDQ projects be spent only on fisheries-related projects
- the creation of long-term or permanent allocations to the CDQ Program, and
- improvement in communication between the CDQ groups and the community residents.

These recommendations represent the most common policy issues also identified by the CDQ groups, the Council, and Congress, and thus contributed to the Council's decision to evaluate the CDQ Program and to identify alternatives to address these and other related issues.

The NRC report also notes that the main goal of the CDQ program is community development, and that by definition is a long-term goal. A stable and dependable program duration is needed by the CDQ groups and managers in order to develop sound business plans and reduce pressures to seek only short-term, financial results. However, simply because the program is considered long-term and carries with it the original intent of the Council does not mean that it must remain continually unchanged in the face of evolving conditions or circumstances that affect the growth and development of the CDQ groups and their member communities. The NRC notes (p. 3):

"...calling for the program to be long-term does not mean it must go on indefinitely nor that it must never change. Periodic reviews should be conducted, and changes made to adapt rules and procedures as necessary. There can be a balance between certainty and flexibility if the program is assured to exist for some reasonable time...and if major changes in requirements are announced in advance with adequate time to phase in new approaches."

²"The Community Development Quota Program in Alaska", 1999.

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1.2.3 H. R. 553

The Western Alaska CDQ Program Implementation Improvement Act of 2001 (H.R. 553) proposed by Congressman Don Young in February 2001, would have amended Section 305(i) of the MSA, which is the section that addresses the CDQ Program. The amendments proposed some significant policy and fisheries management changes to the CDQ Program developed by the State of Alaska and the Council in 1992.

H.R. 553 would require that the MSA be amended to specifically state that the Secretary of Commerce is responsible for approving allocations of quota among the CDQ groups. Staff interpretation of the impact of this provision has evolved through development of this analysis. Staff initially believed that H.R. 553 would significantly increase the responsibility of the Secretary for making CDQ allocations and for oversight of the CDQ Program. However, after consultation with NOAA GC, staff now understands that the MSA, as currently drafted, requires that the Secretary of Commerce be ultimately responsible for making CDQ allocations among the CDQ groups and that this responsibility cannot be deferred to the State. Therefore, the provisions of H.R. 553 that address the Secretary's responsibilities for CDQ allocations do not change the Secretary's role as much as staff previously believed.

One of the proposed amendments under H.R. 553 was to limit government oversight to CDQ projects funded only by CDQ royalties, which would resolve the longstanding debate about whether government oversight extends to the businesses owned by the CDQ groups. The legislation also likely would have allowed CDQ groups to invest in non-fisheries related projects, as the purpose of the program would be changed to the following: "(A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development." While similar to the current FMP language describing the purpose of the CDQ Program above, it does not explicitly state that the intent is to develop a self-sustaining *fisheries* economy as is currently understood as the Council's intent. Finally, H.R. 553 would have made changes in the accounting for catch against CDQ allocations.

The changes proposed in H.R. 553 would have required some interpretation regarding how the CDQ Program would be managed on a daily basis. Certainly, however, the bill required NMFS to take a more active role in the CDQ Program administration and allocation process. These amendments would likely increase the responsibility of both NMFS and the Council to establish specific evaluation criteria for CDQ allocations and to become more actively involved in the review and evaluation of the economic development projects and performance of the CDQ groups. However, these issues must be addressed by the Council and NMFS through this analysis regardless of the outcome of H.R. 553.

A Congressional hearing was held on H.R. 553 on July 19, 2001, within the Subcommittee on Fisheries Conservation, Wildlife and Oceans. No action was taken on the bill in the 107th Congress, and staff is unaware of the introduction of a bill with a similar scope in the 108th Congress. However, the proposals in this bill did contribute to the dialogue surrounding the issues for analysis, and provided an impetus to consider specific alternatives similar to provisions proposed in the bill. Specifically, the proposal under H.R. 553 to allow CDQ groups to invest in non-fisheries related projects was included in this analysis for consideration.

1.2.4 Legal Challenges to the CDQ Allocation Process

APICDA, one of the six CDQ groups, sued NMFS over the 2001-2002 CDQ allocations in Federal District Court. On January 30, 2002, Judge H. Russell Holland issued an order upholding NMFS's approval of the

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2001-2002 CDQ pollock allocation for the APICDA (APICDA v United States Dep't. of Commerce).³ APICDA claimed that the NMFS' approval of the CDQ allocations recommended by the State of Alaska violated the Magnuson-Stevens Act, the Administrative Procedure Act, and the equal protection and due process requirements of the United States Constitution, asserting the following seven claims: (1) that the State and NMFS provided insufficient prior public notice of the State's proposed CDP allocations; (2) that the Magnuson-Stevens Act requires the State's criteria for evaluating CDP proposals to be approved by NMFS and published in the Federal Register; (3) that APICDA was denied due process because it was not provided adequate notice that its CDQ pollock allocation was to be less than it was in the previous allocation period; (4) that NMFS unlawfully delegated its authority to approve CDP allocations to the State; (5) that NMFS' approval of the State's recommendations were arbitrary and capricious; (6) that APICDA is entitled to a declaratory relief setting APICDA's pollock allocation at the percentage that had been set for the previous allocation period; and (7) that APICDA had been denied equal protection under the law. Although APICDA had asserted its arguments in a "Motion for Summary Judgment," Judge Holland ruled that APICDA's claims were in fact and law an appeal from NMFS' administrative decision to approve the State's CDQ pollock allocations for 2001-2002.

At the outset, Judge Holland ruled that the Court had no jurisdiction to review the NMFS regulations implementing the CDQ program. Regulations setting forth the procedures applying to the CDQ applicants, the State's role in evaluating proposed CDPs and recommending quotas to NMFS, and NMFS role in approving the recommendations were all published in the Federal Register on November 23, 1992. These regulations were subject to judicial review only during the first 30 days after promulgation. 16 U.S.C. § 1855(f)(1). Since APICDA filed its action in February 2001, Judge Holland ruled that "[t]o the extent that APICDA seeks to maintain a cause of action that challenges the way the regulations divide the roles within the CDQ program between the State and NMFS, APICDA's cause of action is beyond the statute of limitations period." Judge Holland then proceeded to rule against APICDA on each of its claims for relief.

1.2.5 Council CDQ Policy Committee

As a result of several of these occurrences and the overall evolution of the program, the Council recognized the need to evaluate the CDQ Program and to identify issues of concern and alternatives to address those issues. To assist them in this process, the Council appointed a CDQ Policy Committee (committee) in December 2000, to address issues related to CDQ oversight responsibilities of the government, as well as provide policy recommendations to the Council on changes that may be needed to regulations governing the distinct Federal and State roles, the CDQ allocation process, and the program administration. In addition to a chairman, the committee is comprised of representatives of each of the six CDQ groups, one Council member, and a representative each from the State of Alaska and NMFS.

The committee met in both April and May 2001, and identified priority issues, as well as alternatives and options related to those issues, for consideration by the Council. While the committee made specific recommendations on each of the identified issues, the comprehensive list of issues was used as a broad framework by which the Council determined the scope of this analysis. The committee's report and preferences for changes to the CDQ Program are included in Appendix A to this document. Where the committee did not reach consensus, the vote of the committee is also expressed.

³This summary of the APICDA lawsuit and Judge Holland's opinion is taken from a memorandum dated February 5, 2002, from Jonathan Pollard, NOAA General Counsel Attorney-Advisor, to Lisa Lindemen, NOAA General Counsel for Alaska.

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The CDQ Policy Committee was initially created on the basis that it would be disbanded upon completion of its task to identify and address the priority policy issues and provide recommended changes to the Council. Upon receiving the committee report, however, the Council decided to keep the committee intact for a minimum of one year, in order to address on-going and upcoming CDQ policy issues on an as-needed basis.

Based on the recommendations of the committee, in June 2001, the Council requested that staff prepare an analysis of the following issues. For purposes of analysis, these were organized into eight issues, and further organized under 4 general categories:

- The CDQ Allocation Process

Issue 1: the process through which allocations are made

Issue 2: length of the allocation process

Issue 4: types of quotas

Issue 5: the evaluation criteria

- Oversight by the State and NMFS

Issue 3: role of government in oversight

Issue 6: extend of government oversight of CDQ subsidiaries

- Allowable Investments

Issue 7: allowable investments by CDQ groups - Non-fisheries-related projects

- Other Administrative Issues

Issue 8: relax requirements for quota transfers and alternative fishing plans

As previously described, many of the issues identified for analysis are related to government oversight responsibilities and stem from issues raised in H.R. 553. The analysis that was initiated was thus considered relatively comprehensive in scope with regard to future modifications to the administrative aspects of the current CDQ Program. The specific alternatives and options under consideration in this analysis are listed in Section 1.4.

1.2.6 Council action in April 2004

The Council initiated an analysis of the eight issues identified above in June 2001, and the amendment package was entitled BSAI Amendment 71. At the Council's June 2002 meeting, the Council approved a preferred alternative for each of the eight specific issues related to the administrative and policy elements of the CDQ Program. The preferred alternative would make numerous changes to the existing CDQ Program in western Alaska, including changes to the CDQ allocation process, expansion of the program to allow limited investments in non-fisheries related projects, and specification of the role of NMFS and the State of Alaska in program oversight. Upon Secretarial approval, the majority of the elements in the Council's preferred alternative would be promulgated in Federal regulations. However, two specific issues would also be amendments to the BSAI FMP: 1) the role of government in program oversight (Issue 2); and 2) the goals and purpose of the program (part of Issue 7).

As of April 2004, the proposed rule to implement all of the Council's recommendations on BSAI Amendment 71 has not been completed. Several issues that surfaced after the Council's action have delayed the proposed rule, one of which was the need to incorporate an appeals process into the rulemaking. An appeals process

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was not part of the Council's original preferred alternative in June 2002. Staff provided additional analysis to the Council in October 2003, and the Council amended its June 2002 motion on BSAI Amendment 71, Issue 1, to add an administrative appeals process to NMFS's review of the State's CDQ allocation recommendations. The Council originally recommended not to include an appeals process under Issue 1, due primarily to the concern that the allocation process could not be completed in a reasonable time frame if an appeals process was included.

The Council amended its decision at its October 2003 meeting based on NMFS's determination that a formal appeals process is necessary to comply with the Administrative Procedure Act and the U.S. Constitution. The Council recommended a 6-month appeals process, which would allow time for the State and the CDQ groups to respond to problems identified in an appeal, understanding that the State's application period would need to start several months earlier than previous years, in order to incorporate time for potential appeals. In addition, the Council approved a requirement to extend the existing CDQ allocations if the State's recommendations for new allocations could not be implemented by NMFS by the end of an allocation cycle. This amendment (see Appendix E) to the June 2002 Council motion would be included in the rulemaking package for BSAI Amendment 71.

In addition, NMFS Alaska Region staff has received recent guidance from NOAA General Counsel that affects the Council's decisions on BSAI Amendment 71 and has delayed progress on the rulemaking package. In April 2004, NMFS staff notified the Council that they have suspended work on the proposed rule that would implement the Council's recommendations on BSAI Amendment 71, primarily due to concerns that more analysis is necessary on new legal issues related to the program oversight role of NMFS and the State of Alaska. Last fall, the U.S. Fish and Wildlife Service (USFWS) wrote a letter (dated 11/17/03) to NMFS concluding that NMFS is taking a Federal action under the Endangered Species Act (ESA) when it approves CDPs and amendments to the plans. The USFWS concluded that NMFS is authorizing the economic development projects and, therefore, has a responsibility to consult with the USFWS on these projects under the ESA. Since the implementation of the CDQ Program in 1992, NMFS has not considered ESA or NEPA issues in its decisions to approve CDPs and amendments. NOAA General Counsel generally agrees with the USFWS on this conclusion and has advised NMFS that approval and amendment of CDPs likely are agency actions subject to the consultation requirements of the ESA.

NMFS is requesting a formal legal opinion from NOAA General Counsel regarding this conclusion on ESA responsibility, and also will request an opinion on whether NMFS's approval of CDPs and amendments requires environmental review under NEPA. These additional responsibilities would require NMFS to conduct some level of environmental review for the CDP as a whole and for any amendments before NMFS can approve those actions. NMFS has not fully evaluated the process that would be required or the agency resources necessary to fulfill these additional responsibilities. However, it is certain that this determination would result in additional review responsibilities for NMFS staff and additional information requirements for the CDQ groups.

The assertion that environmental review by NMFS is necessary stems from NMFS's regulations that require the CDQ groups to receive prior approval from the State and NMFS before spending money or conducting activities described in the CDP or amendments to the CDP. Before expanding its current role, NMFS needs to further examine the extent of its legal responsibilities for environmental review and provide the Council, State, and CDQ groups with an assessment of the impacts on the program and the agencies. This could directly affect the Council's recommendations on Amendment 71, as a large part of those recommendations addressed government oversight by the State and NMFS (Issue 3 and Issue 6).

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As a result of this new issue and its potential implications, NMFS proposed an approach to incorporate further analysis of the government oversight issues within Amendment 71. Given that the CDQ policy amendment package for BSAI Amendment 71 had been delayed to such an extent, NMFS also recommended splitting Issue 7 (allowable investments - non-fisheries projects) and Issue 8 (administrative issues) out of the original package and creating separate amendment and rulemaking packages for each of these issues, in order to expedite their implementation. The Council concurred with NMFS' approach and took action in April 2004, to amend its previous motion on BSAI Amendment 71 and split the FMP amendment package into two parts: 71a and 71b.

The intent of the Council's motion was that **Amendment 71a** would address revisions to the purpose of the CDQ Program and the allowance for a portion of the CDQ groups' royalties to be spent on non-fisheries related projects, as approved by the Council previously. **Amendment 71b** would address the oversight issues and the CDQ allocation process, and staff would provide additional analysis of the oversight issues to the Council for initial review at a future Council meeting. The Council also recommended that the regulatory revisions addressing quota transfers and alternative fishing plans in Issue 8 of BSAI Amendment 71 be implemented through a separate regulatory amendment as soon as possible. The Council's recommendation to move these issues forward as three separate rulemaking packages (71a and 71b are also FMP amendments) stems from concern that continued legal and policy questions about the appropriate role of NMFS and the State in the oversight of the CDQ Program are hindering the implementation of the non-fisheries projects allowance, for which no legal issues have been identified.

This amendment package under consideration (BSAI Amendment 71a) thus represents only a portion of the Council's preferred alternative on BSAI Amendment 71 from June 2002. This analysis has been restructured to address only the recommendations associated with Issue 7 of the original analysis as follows:

Council preferred alternative on Issue 7: Allowable Investments by CDQ Groups

- Allow each CDQ group to invest up to 20 percent of its previous year's pollock CDQ royalties in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum. (*regulatory amendment*)
- Require that any non-fisheries related investment be made in economic development projects in the region of Alaska represented by the CDQ groups and be self-sustaining. In-region extends to the borders of the 65 communities that participate in the CDQ Program. (*regulatory amendment*)
- Revise the statement of purpose for the CDQ Program as follows: "The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an on-going, regionally-based fisheries economy and, as a second priority, to strengthen the non-fisheries related economy in the region." (*FMP amendment*)

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1.3 Problem Statement

The Council adopted the following problem statement at the December 2001 Council meeting:

Problem Statement for BSAI FMP Amendment 71

The Western Alaska Community Development Quota program was developed by the Council for the purpose of developing sustainable fishery-based economies in western Alaska communities by providing opportunities to participate in the BSAI fisheries in order to promote their overall economic well-being.

The program was founded on the following elements:

1. Community-based planning and goal setting. Community Development Plans (CDPs) are developed by community representatives on the CDQ groups' boards to meet their social and economic goals.
2. Allocations to the CDQ groups would be based on a balance between performance and need. Performance is measured through the goals, objectives, and milestones of the CDPs with an emphasis on delivering benefits to the communities and residents of western Alaska.
3. Accountability. The oversight role of the State of Alaska and NMFS is intended to ensure accountability of the CDQ groups in implementing their CDPs and meeting the goals of the program.

Although the primary objective of the CDQ Program is to help the participating communities to establish a viable presence in this capital-intensive industry, over time there has been a growing need to take into account the changing nature of the CDQ groups, the conditions in which they operate, and the communities they serve to benefit. The problem, given the growth and maturation of the CDQ Program over the last eight years, is that some of the administrative and policy aspects of the program may not be currently structured to adapt to changes, or may need to be clarified in Federal regulations, so that they will best suit the long-term goal of the program. This review by the Council and possible Council action is intended to address these concerns and issues.

The alternatives under consideration in this amendment are consistent with the above problem statement, which outlines the overall need for considering administrative and policy changes to the current CDQ Program. Under the current regulatory structure, CDQ groups may only invest their CDQ revenues in fisheries-related projects, with some limited exceptions. The proposed changes to the current program are detailed in the following section and span a range of alternatives and options to address this issue.

The proposed action is a BSAI Fishery Management Plan amendment (Amendment 71a) that would require changing language in Section 13.4.7.3 of the BSAI FMP. That amendment would allow Federal regulations (50 CFR 679.30) to be changed or added to the effect necessary that they meet the intent of the Council's actions to modify the restrictions on CDQ investments. Staff assumes that this action would be limited to amending the BSAI FMP and Federal regulations, and subsequent changes to State regulations (6 AAC 93) governing the CDQ Program would be made as appropriate. Therefore, with proper justification, the Council may make its preferred changes with approval of the Secretary of Commerce.

1.4 Description of the Alternatives

The policy issue under consideration in this amendment proposes to change the allowable investments by CDQ groups in the CDQ Program. The no action alternative is included, as well as three alternatives to the status quo, and several related options and suboptions.

Alternative 1: No Action. NMFS regulations implement the Council’s intent, that the revenue generated by the CDQ allocations is to be spent on “fisheries-related” investments and projects to benefit the communities that are eligible for the CDQ Program. From NMFS regulations at 50 CFR 679.1(e):

The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries-related economy.

Alternative 2: Continue to require that the CDQ groups invest only in “fisheries-related” projects, but clarify NMFS regulations as follows:

- Add specific prohibition against CDQ groups investing in non-fisheries related projects; and
- Clarify that this prohibition does not apply to certain categories of expenditures or investments, such as investment accounts or scholarships. Focus regulations on economic development projects.

Alternative 3: **(preferred alternative)** Revise NMFS regulations to allow investments in non-fisheries related projects. The following options represent the annual maximum amount of investment in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

Option 1: Allow each CDQ group to invest up to 5 percent of its pollock royalties in non-fisheries related projects.

Option 2: **(preferred alternative)** Allow each CDQ group to invest up to 20 percent of its pollock royalties in non-fisheries related projects.

Option 3: Allow each CDQ group to invest a maximum of \$500,000 in non-fisheries related projects.

Option 4: Allow each CDQ group to invest up to 50 percent of total revenues in non-fisheries related projects.

Option 5: Allow each CDQ group to invest a maximum of \$1,000,000 in non-fisheries related projects.

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Suboptions for Alternative 3 related to limits on non-fisheries related investments:

Suboption 1: **(preferred alternative)** Require that any non-fisheries related investment be made in economic development projects in the region of Alaska represented by the CDQ group and be self-sustaining.

Suboption 2: Require that any non-fisheries related projects be:

(A) for education, vocational training, scholarships, or other human resource programs for residents of the CDQ communities; or

(B) community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group.

Suboptions for Alternative 3 related to the goals and purpose of the CDQ Program:

Suboption A: The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (additions to existing regulations are underlined):

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible western Alaska communities primarily to provide the means for investing in, participating in, starting, or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries economy, and secondarily to strengthen the non-fisheries related economy in the region.

Suboption B: The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (additions to existing regulations are underlined and deletions are stricken):

The goals and purpose of the CDQ Program are to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, ~~fisheries-related~~ diversified economy.

Suboption C: **(preferred alternative)** The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (additions to existing regulations are underlined and deletions are stricken):

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries economy and, as a secondary priority, to strengthen the non-fisheries related economy in the region.

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Alternative 4: No restrictions on what the CDQ groups may spend money on or what type of projects they may invest in.

Suboption for Alternative 4 related to the goals and purpose of the CDQ Program:

Suboption A: Revise the goals and purpose of the CDQ Program (as was proposed in H.R. 553):

The goals and purpose of the CDQ Program are: (A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development.

2.0 DESCRIPTION OF THE CDQ GROUPS

The majority of this section was originally provided by KPMG, LLP, a contracting firm employed by the Council to assist in the compilation of data and analysis of the organizational and legal structure of the CDQ groups and their related financial information. Each section provided by KPMG is noted as such.

2.1 CDQ Communities and Groups

A comprehensive list of the 65 CDQ communities arranged by CDQ group is provided in Table B.1 in Appendix B. The six existing CDQ groups are: Aleutian Pribilof Island Community Development Association (APICDA), Bristol Bay Economic Development Corporation (BBEDC), Central Bering Sea Fishermen's Association (CBSFA), Coastal Villages Region Fund (CVRF), Norton Sound Economic Development Corporation (NSEDCC), and Yukon Delta Fisheries Development Association (YDFDA).

2.2 Organizational Description of CDQ Groups (provided by KPMG)

All of the CDQ groups are organized as non-profit corporations which serve as the managing organizations for implementation of the CDPs. Resident fishermen of each group's member communities must make up at least 75 percent of its board of directors. Other members of the board may be representatives of industry, members of non-eligible communities, or other individuals. Typically, an executive director manages the day-to-day affairs of the organization. The CDQ groups also hire staff members to carry out the directives of the executive director and conduct business activities for the CDQ groups. Committees may be formed from the board membership for specific activities, such as business or educational development. For management assistance, the groups also have service contracts with industry consultants and other professionals.

There are several different business types the groups have created to correspond to the type of activity they are engaged in. These businesses report both financially and/or operationally to the CDQ non-profit corporation level (see the attached organizational charts, Figures 2.1 - 2.6). The types are as follows:

For-profit corporations:

A majority of the CDQ groups have formed subsidiary, 100 percent owned, for-profit corporations for their investments in fishing activities. These corporations typically have the same management as the non-profit parent. The companies reporting to these subsidiaries are either partially or fully owned by the groups. Depending on their percentage ownership in the companies, the CDQ groups may or may not have a controlling interest. Earnings from these businesses are taxed at the for-profit corporation level.

Non-profit organizations:

Some CDQ groups have formed separate non-profit corporations for investment, education, or research purposes. This structure allows the CDQ groups to keep the funding and expenses of these corporations separate for financial and tax-reporting purposes. If a CDQ group has tax-exempt status under section 501(c)(4) of the IRS code for community development purposes, forming a separate non-profit corporation allows it to carry on 501(c)(3) charitable and educational activities. Depending on whether or not a CDQ group has a controlling interest in the organization it may or may not report the financial statements on a consolidated basis.

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Limited Liability Companies:

All CDQ groups participate in Limited Liability Companies (LLCs) that carry out for-profit fishing activities. These companies roll-up to either the for-profit subsidiaries or directly to the CDQ non-profit corporations. They typically are managed by the non-CDQ partners in the business, if there are any.

2.3 Financial Overview (provided by KPMG)⁴

To prepare this overview, the 2001 and 2002 consolidated financial statements for the six CDQ groups were used. The combined financial statements for 2001 and 2002, were summarized and are attached in Table 2.1 (combined statements of activity) and Table 2.2 (combined statements of financial position). This composite is not intended to be a presentation in accordance with generally accepted accounting principles and is only for financial analysis. The following descriptions of the summarized financial information were prepared from the combined statements.

2.3.1 Combined Statements of Activity

Since CDQ groups are non-profit organizations, their financial reporting does not refer to the “income statements” that a for-profit business would. The equivalent financial statement for a CDQ group is a “statement of activity.” Revenues and expenses are listed and the difference between the two is referred to as “increase (decrease) in net assets.” There is no reference to “net profits” or “net income” as used in a for-profit income statement. The increase in net assets for all the CDQ groups, in 2002, was \$22,557,286, or 33 percent of revenue. In 2001, the increase in net assets was \$41,205,740, or 54 percent of revenue.

Revenues

Sixty-seven percent (67 percent) of CDQ revenues, in 2002, were from royalties received for the right to harvest the CDQ allocations granted to the groups. These royalty (or “harvest”) agreements pay royalties on a fixed rate per weight of fish harvested, or a percentage of the sales price received for the fish. The second largest source of revenue, 25 percent of the total, was for the CDQ groups harvesting, processing, or selling their own allocations (programs). Several groups had decreases in revenue due to their investments in fishing vessels, processors, other fishing-related businesses, and investments. In 2002, the revenues from investments made up most of the “Other” category.

	2002		2001	
Royalties	\$46,715M	67%	\$42,571M	56%
Programs	\$17,369M	25%	\$14,406M	19%
Businesses	(\$2,431M)	(4%)	\$16,991M	22%
Other	\$7,710M	11%	\$2,409M	3%
TOTAL REVENUE	\$69,363M		\$76,377M	

Total revenues in 2001, were 9 percent higher than in 2002. In 2001, royalties contributed 56 percent to the total amount of revenue, partnerships contributed 22 percent, and programs contributed 19 percent. Interest income made up most of the “Other” category.

⁴This section was originally prepared by KPMG using 1999 and 2000 data. The section was edited and figures were updated by NMFS staff with 2001 and 2002 data.

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Expenses

Generally, expenses are divided into two major categories in the financial statements: program, and finance and administrative expenses. However, similarity across the CDQ groups in the types of expenses included in these two categories was insufficient to provide a relevant description based on the presentations in the financial statements. For the purposes of this analysis, after Table 2.1 was produced, the expenses within the program and administrative expense categories was restated using supplemental detail provided in the financial statements.

Using captions in the financial statements, program expense was restated to be the equivalent of what is normally known as “operating” expense or “cost of goods sold.” This included activities related to carrying out the specific CDQ programs that are directly related to fishing activities, and did not include programs such as oversight or administration, nor programs that benefit the community through non-fishing activities. Items classified as administrative expense included CDQ staff and board expense, office expense, interest expense, community grants, community outreach (visiting communities to discuss programs, funding drug and alcohol programs in the communities, etc.), educational and training expense, and management and consulting fees. This restatement is for the purposes of the analysis only. The term “program” expense was used subjectively and does not indicate any expenses which were incorrectly classified in any financial statements.

The major expense categories as listed on financial statements:

	2002		2001	
Program	34,078,706	69%	23,949,606	66%
Administrative	13,082,691	26%	11,686,588	32%
Impairment	2,504,918	5%	397,353	1%
TOTAL EXPENSE	49,666,315		36,033,547	

Expense restated (for year 2002 only):

	2002	
Program	27,908,838	56%
Administrative	19,252,559	39%
Impairment	2,504,918	5%
TOTAL EXPENSE	49,666,315	

Program Expense

Program expenses cannot be organized into any consistent categories due to the differences in reporting and activities among the various organizations. Program expenses are listed to correspond with the CDQ projects, other than administrative projects, listed in the CDP. The percentage of program expense compared to total expense (excluding impairment) ranged from 22 percent to 77 percent for all the CDQ groups.

Administrative Expense

Administrative expense as a percentage of total expense (excluding impairment) ranged from 23 percent to 78 percent among the six groups. Within the administrative expense category the largest expenditures were for the following:

Training, education, scholarships	15%
Community Outreach, Grants, Donations	13%
Depreciation and Amortization	13%

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Salaries and Benefits	13%
Professional Fees	11%
Office	7%
Travel	6%
Board	5%
Interest paid on debt	4%
Other	13%

Impairment Expense

When a CDQ group invests in a business, the original cost is shown as an asset on the statement of financial position. The investment is accounted for using the “cost” or “equity” method depending on if the CDQ group has significant influence over the investment. It is assumed that the investment will generate future revenue. If it becomes apparent through the annual earnings of the business, or other factors such as industry condition, that it will not generate sufficient future revenue, the investment may be “impaired.” The term “impairment” means the investment will not be recovered through future cash flows. When an investment is impaired, the investment is written down to fair value and the CDQ group will record an expense for the write-down.

2.3.2 Combined Statements of Financial Position

The “statement of financial position” for a CDQ group is equivalent to the “balance sheet” of a for-profit business. Total assets and liabilities are shown with the difference being called “net assets.” Net assets are equivalent to the term “equity” used in for-profit businesses.

Total Assets

The total combined net asset value of all CDQ groups, as of the year 2002, is \$192,858,410. See Table 2.2 for a summary of the total assets and liabilities for the groups.

From 2001 to 2002, net assets increased by \$21,818,327, or 13 percent. The majority of the asset increase was in short-term investments, which increased by \$22,884,662, and in cash, which increased by \$18,735,621. A portion of the increase in current assets was funded by a debt increase of \$14,426,473.

Assets classified as “current” are assets that can or will be liquidated and used for operations within one year. “Long-Term” assets are intended to be held for more than one year. Increases in either current or long-term assets on the statement of financial position are funded from increases in net assets as shown on the statement of activity. Long-term assets are held in four major categories:

Marketable Securities: These are investments in mutual funds, stocks, government bonds, and corporate debt. The term “marketable” means they can be sold on the open market. Marketable securities can be termed as either current or long-term assets depending on how long the CDQ group intends to hold them.

LLCs and Partnerships: Generally, if an ownership percentage in a LLC or partnership is 50 percent or less, but greater than 20 percent, the ownership in the company will be shown as an asset on the statement of financial position accounted for using the equity method. The investment is shown as the cost to invest in the company, plus the proportionate share of any future earnings or losses of the company, and adjusted for distributions or additional investments.

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If the CDQ group owns less than 20 percent of a company, it generally uses the cost method of accounting and shows an asset based on the original cost to invest in the business. Under the cost method, the CDQ group has no significant influence over the business. Any distributions of earnings would be shown as revenue to the group, but the value of the investment would not change.

IFQ Permits and Fishing Rights:

The Individual Fishing Quota (IFQ) program allocates rights to fish halibut and sablefish. Some of the CDQ groups have purchased these and other fishing rights for use by the CDQ group. These permits and rights are listed at the cost to obtain the permit.

Property, Plant, and, Equipment

This category has any fishing equipment, fishing vessel, or processing plant investment, plus any other fixed assets such as office buildings and equipment.

Liabilities

Total liabilities increased by \$14,817,135 from 2001 to 2002. The majority of this increase was in long-term liabilities (liabilities that are due in more than one year) with an increase of \$16,618,334. Current liabilities (due in less than one year) decreased by \$2,191,861. Debt was 18 percent of net assets (debt to equity ratio) in 2002, and 11 percent of net assets in 2001. This percentage of debt as a total of net assets ranged from 1 percent to 28 percent within the CDQ groups in 2002.

The CDQ groups also guarantee debt for some of their business partners and affiliates. This debt guarantee is not always reflected on the face of the Statement of Financial Position. However, if such a guarantee exists and it is significant, it should be disclosed in the notes to the annual financial statements.

Restricted Net Assets

If the CDQ group has assets that are legally or contractually restricted for a certain purpose, those assets will be shown as “restricted net assets” on the financial statements. Examples might include, assets restricted by court order or funds given to the group for a specific purpose by an external organization.

Designated Net Assets

If the board of a CDQ group wishes to set aside funds for a specific purpose, such as funding for vessel purchases, future projects, or to establish an educational endowment fund, those assets would be called “designated” on the financial statements. Designated assets are usually shown as a sub-category in the “Unrestricted” asset category. Restricted assets result from restrictions placed by parties external to the organization on a legal or contractual basis. Designated assets are those allocated for a certain purpose by the Board of Directors for the CDQ group. The Board of Directors can vote at any time to change the assets back to “undesignated” if it so desires. The Board of Directors does not have such control over restricted funds.

Return on Investments

A rate of return can be calculated from the detail included in the financial statements for LLCs and partnerships. Return on Equity (“ROE”) is calculated using earnings for the current year and dividing by the average equity (owner’s investment) in the business. For subsidiaries and partially owned companies this information is included in supporting schedules to the financial statements. For this analysis the combined equity in income of partnerships and LLCs was divided by the average investments, to calculate an ROE in 2001 of 29 percent. However, it was noted this percentage was significantly affected by one large investment of one of the CDQ groups. If the investment were removed, the ROE would decrease to 15 percent.

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Table 2.1: Combined Statements of Activities for the CDQ Groups 1999 - 2002

COMBINED STATEMENTS OF ACTIVITIES				
For all CDQ Groups	Combined	Combined	Combined	Combined
Years Ending	2002	2001	2000	1999
Changes in unrestricted net assets:				
Revenues				
Royalties	46,714,986	42,571,312	40,944,373	35,596,382
Program Revenue	12,379,070	11,691,613	5,387,138	7,068,815
Sales of Seafood	2,783,699	2,713,957	3,755,768	902,359
Processing Income	2,206,191			
Gain (Loss) on Investments	4,162,200	(575,578)	(1,288,296)	4,159,558
Equity in Income of Partnerships	(2,431,393)	16,991,312	7,146,438	4,657,402
Interest Income	2,072,736	1,732,289	2,025,749	1,171,747
Gain (Loss) on Project	0	0	(259,391)	0
Grant Revenue	1,328,997	467,933	594,384	
Other	146,460	784,440		506,091
Total Unrestricted Revenues and Gains	<u>69,362,946</u>	<u>76,377,278</u>	<u>58,306,163</u>	<u>54,062,354</u>
Expenses:				
Program	23,068,288	13,607,580	14,169,888	11,991,047
Finance and Administration	13,082,691	11,686,588	11,309,863	10,392,711
Impairment loss or other write-offs	2,504,918	397,353	3,511,412	0
Fishing and fishing processing	11,010,418	10,342,026	3,790,366	2,537,648
Total Expenses	<u>49,666,315</u>	<u>36,033,547</u>	<u>32,781,529</u>	<u>24,921,406</u>
Extraordinary item	90,920	(25,224)		
Changes in temporarily restricted net assets:				
Program Revenue	1,124,950	833,826	333,467	975,746
Minority Interest in Net Assets	1,644,785	53,407	191,738	0
Increase (Decrease) in Net Assets	<u>22,557,286</u>	<u>41,205,740</u>	<u>26,049,839</u>	<u>30,116,694</u>
Net Assets at beginning of year	171,040,083	129,834,343	103,784,508	73,667,814
Net Assets at beginning of year, new consolidated subsidiaries	(738,959)			
Net Assets at end of year	<u>192,858,410</u>	<u>171,040,083</u>	<u>129,834,347</u>	<u>103,784,508</u>

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Table 2.2: Combined Statements of Financial Position for the CDQ Groups

COMBINED STATEMENTS OF FINANCIAL POSITION

For all CDQ Groups	Combined 2002	Combined 2001	Combined 2000	Combined 1999
Current Assets				
Cash	40,649,206	21,913,585	15,718,665	22,736,786
Restricted Cash and cash equivalents	99,408	532,915	1,121,103	1,366,259
Investments	33,775,359	10,890,697	16,324,175	14,400,797
Restricted Investments	2,421,127	1,802,954	1,309,213	975,746
Accounts Receivable	10,560,835	5,752,397	7,072,366	3,745,432
Interest Receivable	726,998	673,252	365,872	36,076
Note Receivable, net	478,557	1,239,081	596,114	1,311,082
Advances from affiliated companies	121,800	2,960,783	1,609,500	531,430
Inventories	795,828	938,070	2,343,152	1,413,214
Prepaid	428,453	575,539	309,981	267,595
Total Current Assets	90,057,571	47,279,273	46,770,141	46,784,417
Long-Term Assets				
Notes Receivable - Non-current	3,520,241	2,966,243	2,464,501	4,004,176
Prepaid Rent	634,270	645,681	662,163	698,403
Investments:				
Marketable Securities	29,978,021	29,564,435	27,251,509	21,140,449
Partnerships, LLCs, etc.	56,942,638	69,121,035	48,535,786	25,493,876
Assets held in trust	1,300,000	1,300,000	1,300,000	
Other investments	45,981	45,981	0	308,854
Construction in Progress			266,319	78,469
IFQ Permits and Fishing Rights	19,740,559	18,482,372	6,688,027	4,627,275
Property, Plant, and Equipment	19,020,699	17,800,093	16,773,682	7,936,771
Other Long-Term Assets	5,676,450	3,075,855	2,046,661	
Total Assets	226,916,430	190,280,968	152,758,789	111,072,690
Current Liabilities				
A/P & Accrued Expenses	2,635,991	3,332,901	2,540,954	1,705,169
Payables and N/P to affiliates	58,148	102,064	1,601,876	
Notes Payable	1,116,413	3,455,209	8,695,015	-
Interest Payable		226,395	261,700	264,368
Judgment Payable	1,103,947	1,318,702	1,200,000	1,200,000
Other current Liabilities	1,864,036	535,125	490,491	345,705
Total Current Liabilities	6,778,535	8,970,396	14,790,036	3,515,242
Notes Payable and Other Long Term Debt	24,412,920	7,794,586	6,748,118	3,772,940
Minority interest in consolidated subsidiaries	2,866,565	2,475,903	2,409,819	
Total liabilities	34,058,020	19,240,885	23,947,973	7,288,182
	31,191,455	16,764,982	21,538,154	
Unrestricted Net Assets	190,112,548	169,237,129	127,501,603	102,808,762
Restricted Net Assets	2,896,077	1,802,954	1,309,213	975,746
Total Net Assets	192,858,410	171,040,083	128,810,816	103,784,508
Total Liabilities and Net Assets	226,916,430	190,280,968	152,758,789	111,072,690

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Figure 2.1 APICDA's organizational structure

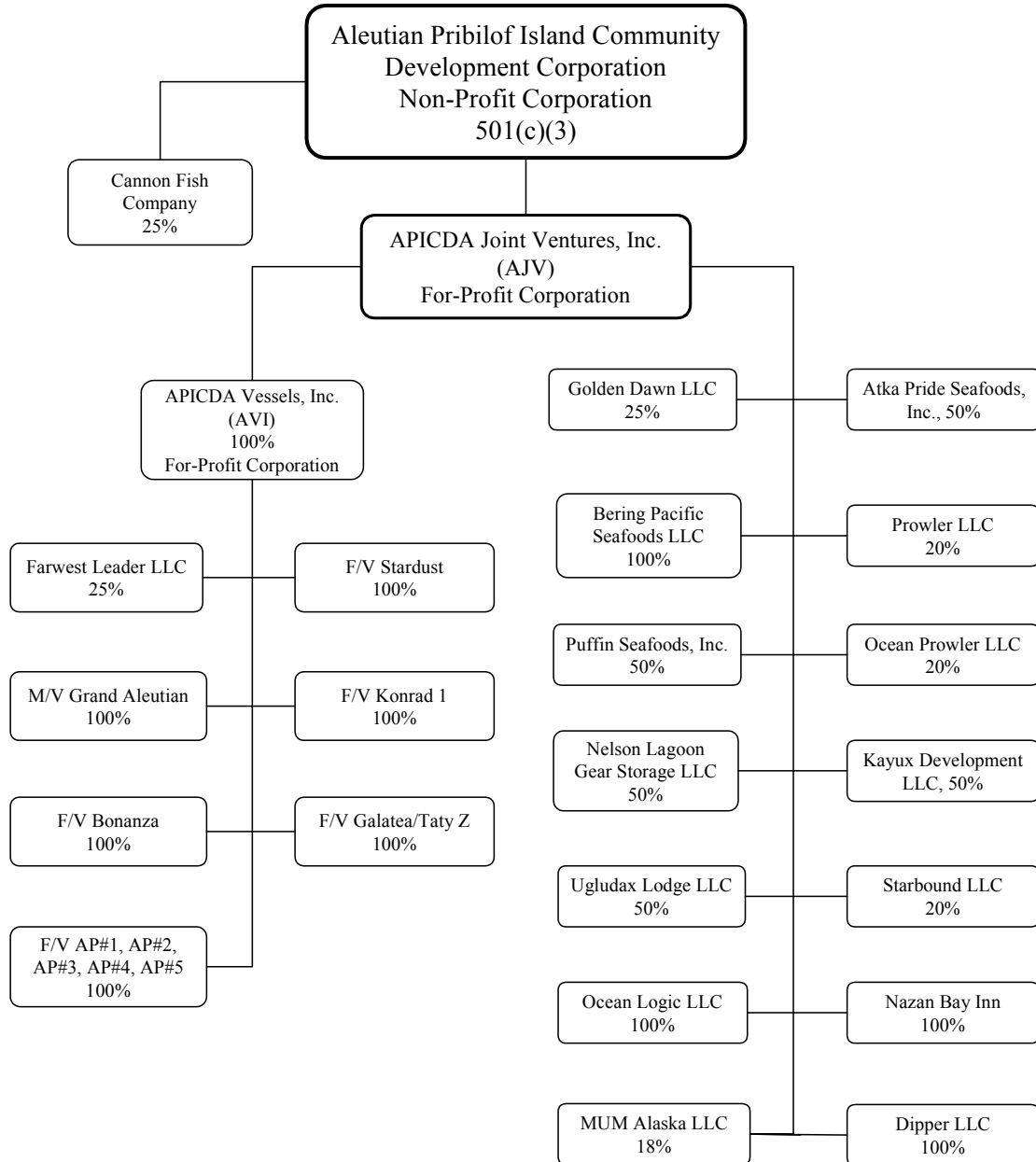
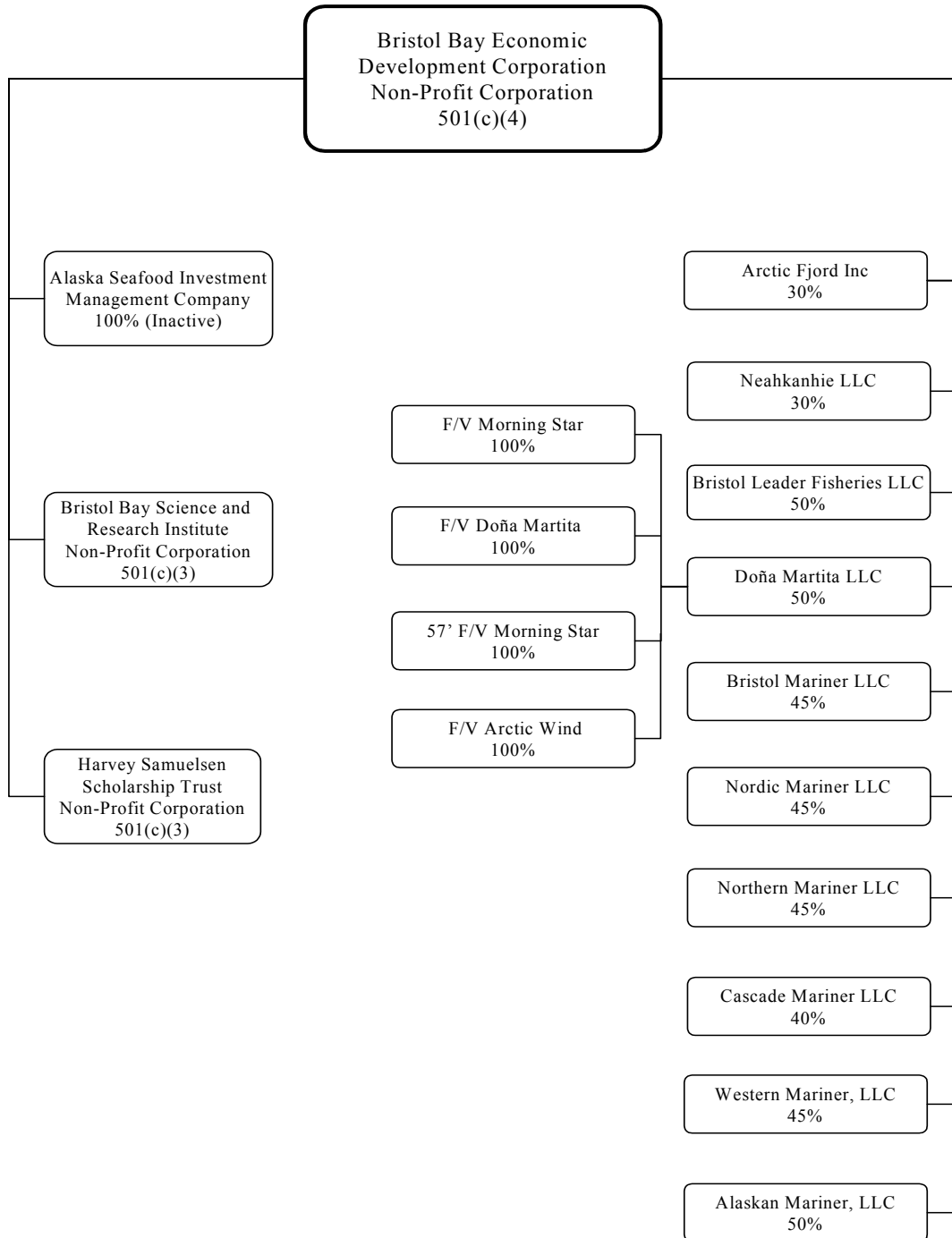
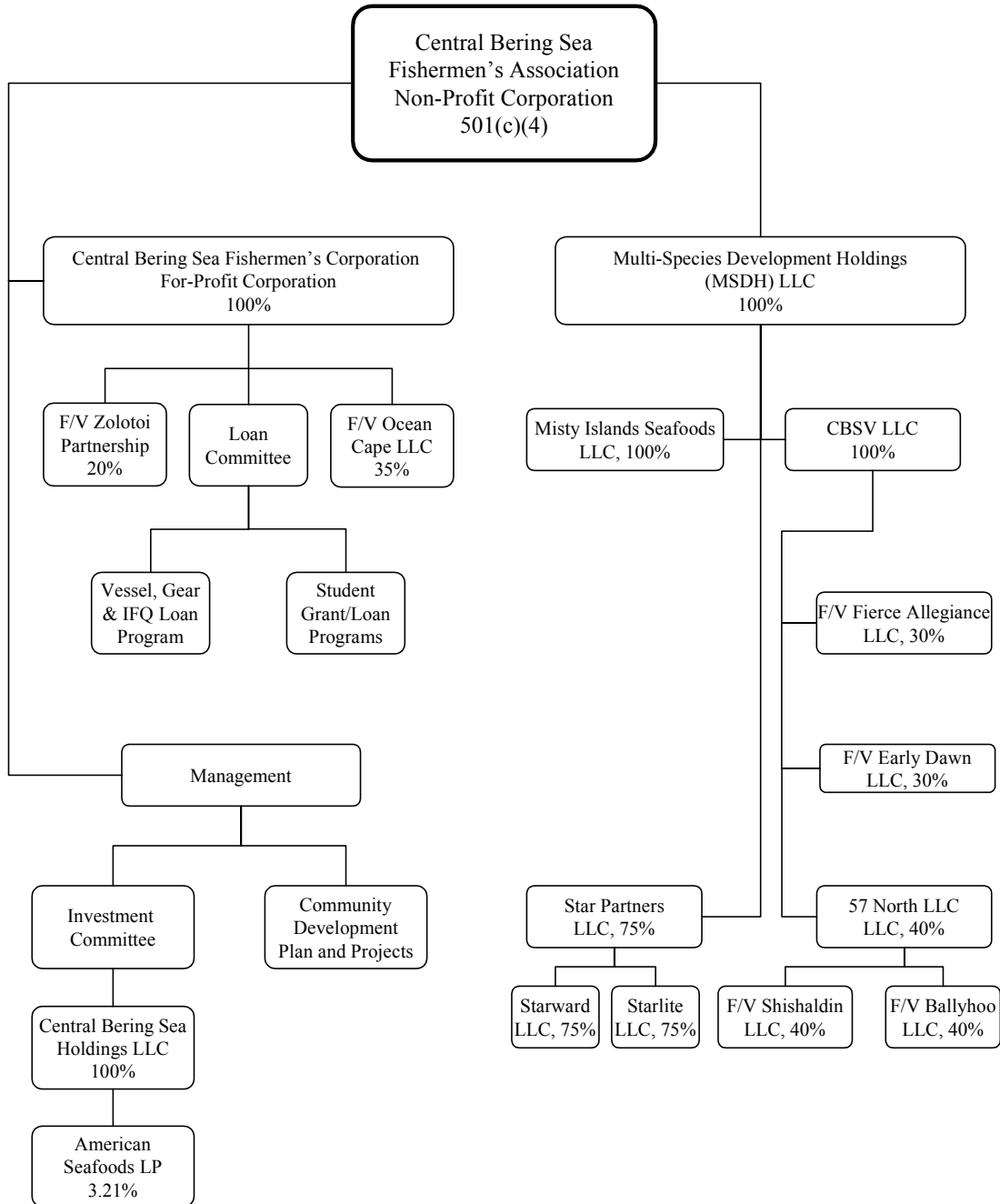


Figure 2.2 BBEDC's organizational structure



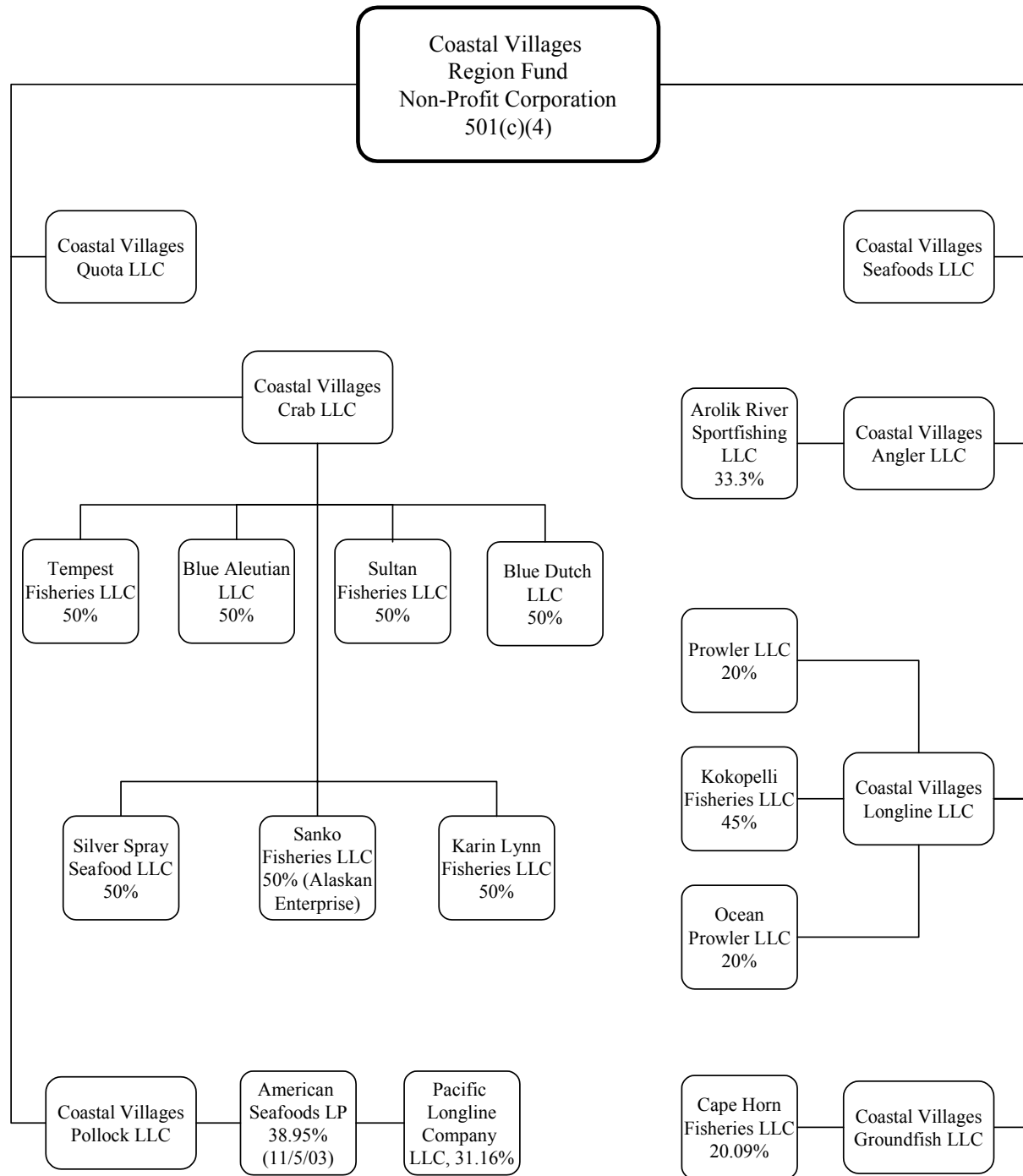
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Figure 2.3: CBSFA's organizational structure



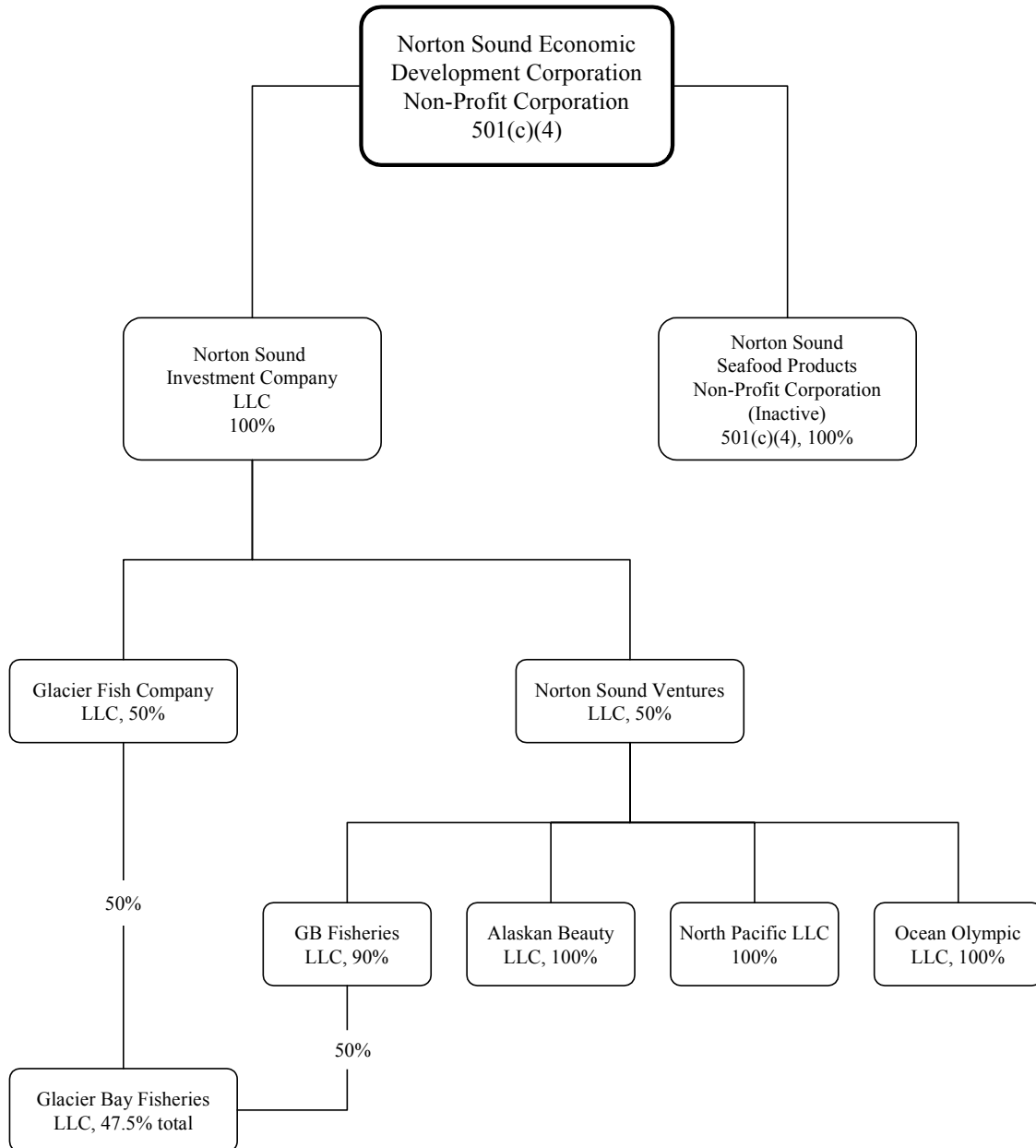
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Figure 2.4: CVRF's organizational structure



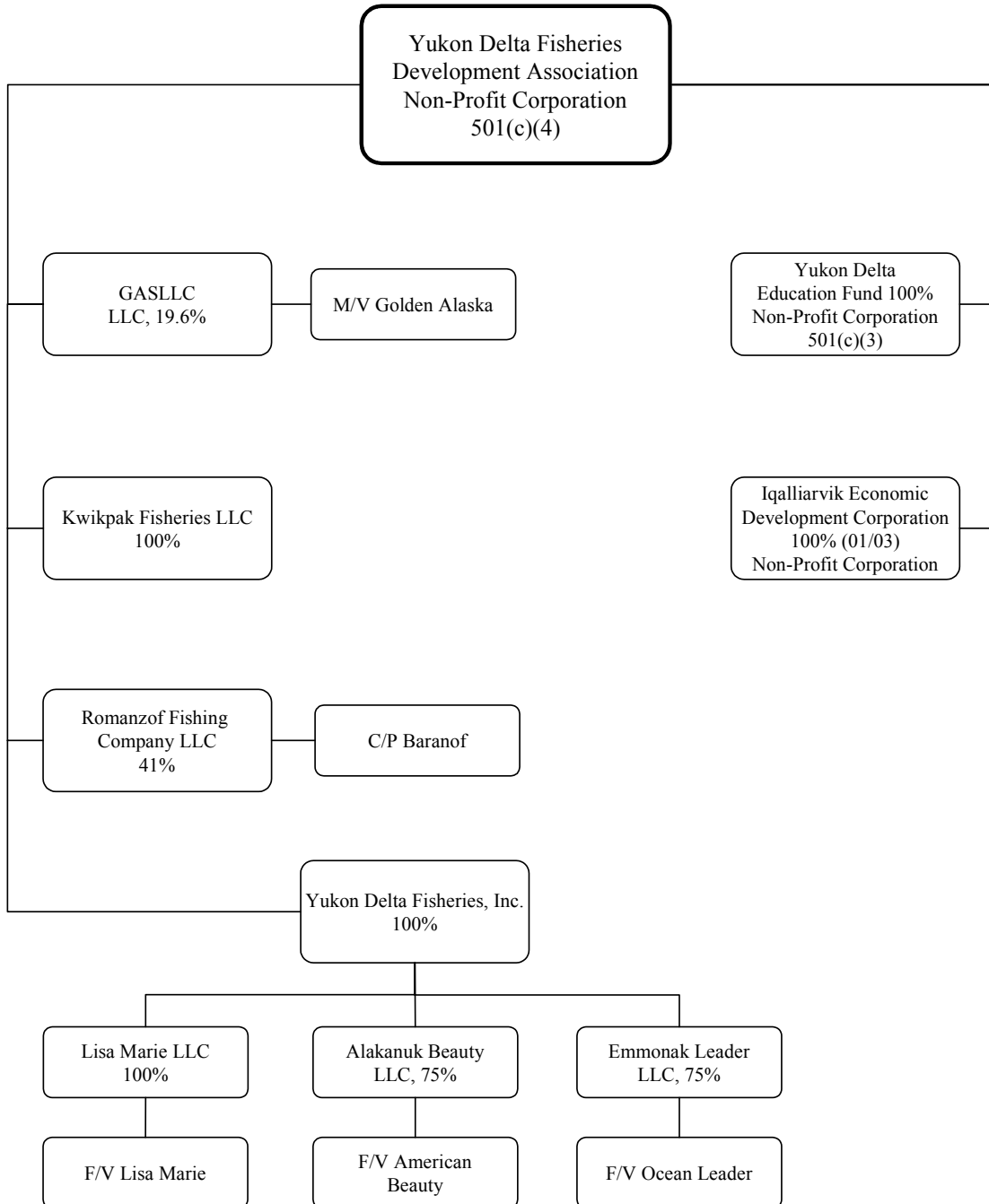
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Figure 2.5: NSEDC's organizational structure



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Figure 2.6: YDFDA's organizational structure



3.0 THE CDQ ALLOCATION PROCESS

3.1 Council's 1992 Criteria and Procedures

As discussed previously in Section 1.2.1, the administrative process the Council envisioned for the CDQ Program in 1992 was outlined in a document entitled, "Western Alaska Community Development Quota Program Criteria and Procedures." This document provided the basis for the Federal and State regulations developed subsequent to the Council's final action to implement the program. This section provides a summary of that document, describing the guidance relevant to the role of the State and NMFS in the administration of the CDQ Program and the requirements of the CDQ groups in the allocation process.

Purpose and Scope

The purpose and scope of the CDQ Program, as stated in the procedures document and reflected in the BSAI FMP, is to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the BSAI fisheries and to promote the economic well-being of local coastal communities in relation to Bering Sea fishery resources. The implementation of the community fishery development plans was intended to enable western Alaska communities to diversify their local economies, provide community residents with new opportunities to obtain stable, long-term employment, and participate in the BSAI fisheries which had previously been foreclosed to them because of the large amount of capital investment needed to enter the fishery.

Eligibility Procedures

To be eligible, a community must have met criteria specified by the State and have developed a fisheries management plan approved by the Governor of the State of Alaska. The community eligibility criteria was eventually institutionalized under the Sustainable Fisheries Act in 1996, as an amendment to the Magnuson-Stevens Act. To be eligible for a CDQ allocation, the community must submit a CDP that consists of a community eligibility statement, community development plan, business plan, statement of the applicant's qualifications, and a description of the managing organization. All of this comprises a comprehensive Community Development Plan (CDP), and as specified, is to be submitted to the State for recommendation on final eligible communities to the Secretary.

The community eligibility statement requires the applicant (which could represent one or more communities) to provide a statement to the State showing the community or group of communities meet six specific qualifying criteria. These criteria were specified in an amendment to the MSA in 1996, Section 305(i)(1)(B)), as follows:

(B) To be eligible to participate in the western Alaska community development quota program under subparagraph (A) a community shall--

(i) be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea;

(ii) not be located on the Gulf of Alaska coast of the north Pacific Ocean;

(iii) meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register;

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(iv) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to be a Native village;

(v) consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea or waters surrounding the Aleutian Islands; and

(vi) not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.

It was clear through the Council's approval of the procedures document and the language in the BSAI FMP that the Council intended that the State take primary responsibility for qualifying eligible communities and reviewing and making recommendations on the CDPs. The procedures expressed that the Council would be consulted on the recommendations, and the Secretary of Commerce would hold the final approval authority and release portions of the CDQ to the eligible applicants as appropriate. The State, however, was deemed the entity responsible for applying the criteria and procedures, and for ensuring that each applicant met the steps outlined in the allocation process.

As stated previously, there are currently 65 eligible CDQ communities participating in the CDQ Program (Appendix B), 57 of which were determined eligible through rulemaking (currently listed in Table 7 to Part 679 of 50 CFR) and 8 of which were approved through NMFS administrative determination on April 19, 1999. Community eligibility criteria for participating in the CDQ Program is included in the Magnuson-Stevens Act (added in 1996 under the Sustainable Fisheries Act amendments), as well as the BSAI FMP and Federal regulations⁵ (in 1992, upon implementation of the CDQ Program), but the exact wording differs among the three documents. NOAA GC has advised that Federal regulations (and the BSAI groundfish FMP) must be revised to be consistent with the eligibility criteria in the MSA, and only communities that meet that criteria can be listed as eligible communities in regulation and participate in the program (NOAA GC, August 15, 2003). The legal guidance further concluded that NMFS must review the eligibility status of each of the 65 participating communities that have been previously determined eligible relative to the exact criteria in the statute. Further analysis of this issue has been delayed at this time, given that Congressional action to clarify the eligible CDQ communities is likely forthcoming prior to the next allocation cycle (2006 - 2008).⁶

Evaluation and Recommendation Procedures

The State outlined a schedule for application and review of proposed CDPs in regulation, based on the Council procedures that prescribed that role to the State. Under Federal regulation, the State is required to provide to the Council and NMFS copies of the plans which are recommended for approval and an explanation of the State's allocation recommendations. The Council also has access to all of the applications and supporting documentation (with the exception of confidential business information), as well as the State's written allocation recommendations. However, the procedures expressed a clear intent that the State be responsible for evaluating applications, and upon consideration of any Council and/or public comments, forward all approved applications to the Secretary with the State's recommendations. Upon receipt of the State's recommendations and the proposed CDPs, NMFS is required to review and approve those that it determines meet all applicable requirements.

⁵50 CFR 679.30(a)(1)(iv)

⁶As of April 2004, at least three bills have been introduced in the 108th Congress to address the CDQ eligible communities issue: S 2197, HR 3550, and HR 3645.

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Upon meeting the eligibility criteria, the 1992 procedures stated that a CDQ group's application should be evaluated on the basis of the following categories: the merits of the community development plan, the business plan, and the level of cooperation among eligible communities. Of specific interest to eligible applicants is the evaluation criteria for the CDP. The criteria listed in the guidance document were eventually translated into a list of twenty criteria in State regulations (6 AAC 93.040) used to evaluate the proposed CDPs. Several of the criteria specifically express the intent to tie the CDQ allocations to fisheries-related investments and projects, and these stem directly from the 1992 guidance document. As reflected in the guidance document, the primary basis for determining the merit of a CDP was to include: the goals and objectives of the project and the identification of realistic and measurable milestones for determining progress; the degree to which the project will develop a self-sustaining local fisheries economy; the level of local employment the project will generate; the degree to which the project will generate capital or equity for local fishing infrastructure or investment in fishing or processing operations; and the degree to which profits will be used to assist in the development of a self-sustaining local fisheries economy.

Figure 3.1 shows the twenty evaluation criteria or factors that are considered by the State when reviewing proposed CDPs. Because the proposed CDPs are the basis for CDQ allocations, these criteria also are the criteria used to make CDQ allocation recommendations. Figure 3.2 shows other State regulations that relate to the determinations that must be made by the State in making CDQ allocation recommendations. Each of these sections of State regulations contain requirements that could be used by the State as a basis for developing CDQ allocation recommendations.

Figure 3.1: State of Alaska CDQ Evaluation Criteria at 6 AAC 93.040

6 AAC 93.040 Final Evaluation of Proposed CDPs (complete CDP applications)

(b) The CDQ team shall consider the following factors when reviewing a complete proposed CDP:

- (1) the number of participating eligible communities and (A) the population of each community; and (B) the economic conditions in each community;*
- (2) the size of the allocation requested by the applicant and the proper allocation necessary to achieve the milestones and objectives as stated in the proposed CDP;*
- (3) the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency;*
- (4) the degree, if any, to which each CDQ project is expected to generate (A) capital or equity in the local fisheries economy or infrastructure; or (B) investment in commercial fishing or fish processing operations;*
- (5) the applicant's contractual relationship, if any, with joint venture partners and the managing organization;*
- (6) the applicant's and the applicant's harvesting and processing partners', if any, involvement and diversity in all facets of harvesting and processing;*
- (7) the coordination or cooperation with other applicants or CDQ groups on CDQ projects;*
- (8) the experience of the applicant's industry partners, if any;*
- (9) the applicant's CDQ projects for employment, education, and training that provide career track opportunities;*
- (10) the benefits, if any, to the state's economy or to the economy of communities that are not eligible to participate in the CDQ program that are in addition to the benefits generated by the proposed CDP for participating communities;*
- (11) a demonstration, through the information submitted under 6 AAC 93.025(a)(11), that the applicant has a formal, effective administrative process that sets out sound business principles and examples of due diligence that the applicant will exercise;*
- (12) the development, if any, of innovative products and processing techniques as well as innovation in harvesting gear for conservation and maximum utilization of the fishery resource;*
- (13) the applicant's ability to maintain control over each of its allocations;*
- (14) the capital or equity generated by the applicant's CDQ projects for fisheries-related business investment;*
- (15) the past performance of the applicant and the applicant's industry partners, as appropriate;*
- (16) the applicant's transition plan, including the objectives set out in the milestone table submitted under 6 AAC 93.025 (a)(13);*
- (17) for each CDQ project, the inclusion in the proposed CDP of realistic measurable milestones for determining progress;*
- (18) the degree of participating community input in developing the proposed CDP;*
- (19) the likely effectiveness of the outreach project described in 6 AAC 93.025(4)(C); and*
- (20) comments provided by other agencies, organizations, and the public.*

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Figure 3.2: State of Alaska CDQ Program Standards at 6 AAC 93.017

6 AAC 93.017 CDQ Program Standards.

To carry out the state's role under 50 C.F.R. 679 and this chapter, the CDQ team shall apply the standards listed in (1) - (9) of this section, as applicable. The CDQ team shall determine whether

(1) a CDP provides specific and measurable benefits to each community participating in the CDP;

(2) as part of a CDP, a CDQ project provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities;

(3) a proposed CDP has the support of all participating communities;

(4) each CDQ project listed in a CDP has the support of the applicant's or CDQ group's board of directors, reflected by official action of the board;

(5) before initiating a proposed CDQ project, a CDQ group exercised a level of due diligence that reflects the value of the investment, the risk involved, and the type of project;

(6) a reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group;

(7) the CDQ group has minimized legal and financial risk;

(8) the CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 C.F.R. 679.1(e); and

(9) in areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

The State also outlined a process for recommending allocations based on whether or not there is sufficient quota to meet the requests in the CDPs. Should sufficient quota exist to satisfy the requests made in all the CDPs, the Governor will, at his discretion, recommend all of the CDPs that meet the requirements to NMFS for approval. This scenario has never materialized, however, as there has not been sufficient quota to fulfill the requests of all the CDQ groups since the program began in 1992. In this case, the State is responsible for apportioning the quota among the applicants based on: 1) the economic feasibility and likelihood of success of each individual project at a reduced quota; and 2) the relative benefits to be derived by participating communities affected by an allocation of fishery resource less than that requested. The State regulations note that in apportioning the quota under this scenario, the State will consider the information specified and required in the CDPs and seek to maximize the benefits of the CDQ Program to the greatest number of participating communities. The State regulations related to this process are consistent with the Council's 1992 approved criteria and procedures.

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In sum, the Council's 1992 criteria and procedures and the transcripts of the relevant Council meetings identify two critical issues related to the recent concerns with the CDQ allocation process. The first is whether the Council intended for CDQ program revenues to be restricted to fisheries-related projects and investments. The original intent stated in the 1992 procedures and the BSAI FMP clearly encourages eligible communities to develop self-sufficient economies based on fishing opportunities, and the Federal and State regulations that followed were based upon this direction. Thus, the evaluation criteria guiding the allocation process was developed heavily toward this end, and would need revision should the Council and the Secretary determine that the CDQ groups could invest in non-fisheries related projects. The current evaluation criteria are not well-suited to evaluating an economic development project that is not fisheries-related.

Secondly, the procedures explicitly design the program as a joint program of the Secretary of Commerce and the Governor of the State of Alaska. Through the Council's action, NMFS was directed to hold the designated percent of the annual TAC of groundfish for each management area in the BSAI for the community quota, to be released to eligible communities who submit a fisheries development plan approved by the Governor of Alaska. Under the guidelines, NMFS was directed to allocate CDQ to the overall program, and the State was responsible for determining the appropriate allocations and the daily management of the program. This process necessarily requires the State to know the details of the CDPs and be able to provide rationale for the allocation decisions. NMFS, however, in its role of reviewing the State's recommendations and the proposed CDPs, was charged primarily with ensuring that the State follows both State and Federal regulations in completing the allocation process.

3.2 NMFS and State Role in the Allocation Process

NMFS's role in the CDQ Program allocations is defined by the MSA, BSAI groundfish FMP, the crab FMP, and regulations at 50 CFR 679 implementing the CDQ Program. The MSA requires that the Council and NMFS establish the CDQ Program and allocate a portion of the quotas from Bering Sea fisheries to the program. In addition, the MSA provides the criteria for communities to be eligible for the CDQ Program (see Section 3.1). However, the MSA does not specifically instruct the Secretary to allocate CDQ to eligible communities or to CDQ groups, nor does it contain requirements about how allocations of quota to the eligible communities should be made.

The BSAI groundfish FMP, developed by the Council in 1992, states that the CDQ Program is a joint program of the Secretary and the Governor of the State. It also requires that portions of the quota allocated to the CDQ Program are to be released by NMFS to "eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for its wise and appropriate use." The crab FMP provides for an allocation of crab to the CDQ Program and states that the "program will be patterned after the pollock CDQ program." The CDQ Program was designed by the State and the Council to benefit western Alaska residents. The State was considered best suited to evaluate the needs of its residents and communities and to make the difficult decisions about how to allocate the CDQ reserve among competing users.

Under the CDQ regulations at 50 CFR 679.30, the State must:

1. Announce a CDQ application period as required by §679.30(a).
2. Hold a public hearing as required by §679.30(b) to obtain comments on the proposed CDPs from all interested persons. The State must provide reasonable public notification of the hearing date and location. At the time of public notification of the hearing, the State must make available for public review all State materials pertinent to the hearing.

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3. Consult with the Council before the State submits its recommendations about the proposed CDPs to NMFS, as required by §679.30(c). The State must make available, upon request by the Council, any proposed CDPs that are not part of the State's recommendations.
4. Transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS, along with the findings and the rationale for the recommendations, by October 15 of the year prior to the first year of the proposed CDP, as required by §679.30(d). In these findings, the State is required to determine that each proposed CDP meets all applicable requirements of 50 CFR 679.

Additionally, 50 CFR 679.30(d) provides the following requirements for NMFS:

NMFS will review the proposed CDPs and approve those that it determines meet all applicable requirements. NMFS shall approve or disapprove the State's recommendations within 45 days of their receipt. In the event of approval of the CDP, NMFS will notify the State in writing that the proposed CDP is approved by NMFS and is consistent with all requirements for CDPs. If NMFS finds that a proposed CDP does not comply with the requirements of this part, NMFS must so advise the State in writing, including the reasons thereof. The State may submit a revised proposed CDP along with revised recommendations for approval to NMFS.

Therefore, based on these regulations, once NMFS receives the State's recommendations, NMFS must make determinations as to whether (1) the proposed CDPs are consistent with the purpose and scope of the CDQ Program as described at §679.1(e); (2) the communities represented by the CDPs meet the eligibility criteria in §679.2; (3) the CDPs contain all of the information required in §679.30(a) and the applicable definitions in §679.2; (4) the State has followed the application procedures, public hearing requirement, and the Council consultation requirement in §679.30(a) through (c); and (5) the State provided NMFS with the findings and rationale for its CDP and allocation recommendations required in §679.30(d).

As intended by the FMPs, these regulations place the primary responsibility of CDQ allocations and day-to-day administration of the CDQ Program with the State of Alaska. Additionally, should NMFS determine that a regulatory requirement has not been met by the State or that the State's rationale is not reasonable or does not support the State's recommendations, NMFS is not provided the regulatory authority to develop or implement allocations to the CDQ groups. Thus, the State's allocation recommendations must be returned to it for further development or revision.

In the past, the CDQ allocation process has taken approximately 8 - 9 months to complete, beginning with the announcement of the State's CDP application process in the spring prior to the first year of fishing the allocations, and ending with NMFS publishing its notice of allocation decision through a decision memorandum or Federal Register notice, if time allows. Given the pending status of the rulemaking package for Amendment 71, NMFS will not have revisions to the regulations governing the allocation process in time for the next allocation cycle for the 2006-2008 allocations. However, NMFS must add an administrative appeals process to the allocation process. This would provide the CDQ groups a meaningful opportunity to appeal NMFS's initial decision about whether to approve or disapprove the State's CDQ allocation recommendations. The State has volunteered to submit its CDQ allocation recommendations to NMFS prior to the October 15 deadline currently in NMFS regulations, in order to accommodate an appeals process. NMFS has developed a preliminary allocation process scheduled for the 2006 - 2008 CDQ allocations, as portrayed in Figure 3.3.

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Figure 3.3: Proposed schedule for the 2006 - 2008 CDQ allocation process

Milestone	Dates
State's application period begins	October 1, 2004
CDQ groups submit proposed CDPs to State	November 1, 2004
State holds public hearing	December 1, 2004
State issues initial CDQ allocation recommendations	December 10, 2004
State accepts comments from groups (End of comment period)	January 10, 2005
State consults with Council	April 2005 Council meeting
State submits allocation recommendations to NMFS	April 15, 2005
NMFS SF issues Initial Administrative Determination (IAD) (45 days from State submission)	June 1, 2005
Deadline for CDQ group to file an appeal (60 days from IAD)	August 1, 2005
Final decision on appeals (allows 4 months to consider appeals)	December 1, 2005
Regional Administrator (NMFS) has 30 days to review appeals decision	December 31, 2005
Final agency action on allocations for 2006 - 2008 (and 2003 - 2005 allocations expire)	December 31, 2005

3.3 Description of CDQ Allocations

As stated previously, the percentage of each catch limit allocated to the CDQ Program is determined by the American Fisheries Act (AFA) for pollock (10 percent), the Magnuson-Stevens Act for crab (7.5 percent), the BSAI FMP for all other groundfish and prohibited species (7.5 percent, except for 20 percent for fixed gear sablefish), and Federal regulations for halibut (20 percent - 100 percent). Under current regulations, the State recommends the percentage of each CDQ reserve that should be allocated to each of the six CDQ groups, with no group receiving more than 33 percent of the overall CDQ allocation. The State makes the allocation decisions after reviewing the groups' CDP applications, holding a public hearing to accept comments and answer questions, and meeting privately with each group. The recommendations are presented to the Council at its December meeting, and any group can formally testify on the initial allocation recommendations at that time. Upon approval by the Council, the recommendations are forwarded to NMFS and the Secretary of Commerce.

A detailed description of the allocation process is provided in Section 3.1, including a description of how the State evaluates a CDP using the existing criteria provided in State regulations (6 AAC 93.040). Generally, the six CDQ groups are in a cooperative relationship with each other when participating in the Council

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process, which affects the overall quota available to the CDQ reserve and the management of the fishing effort. However, the allocation process itself is very competitive among the groups. In allocating the quotas, the State faces a complicated multi-criterion decision-making problem. Because the allocations are a zero-sum process, any increase in one group's allocation from one cycle to the next is necessarily going to come at the expense of one or more group's allocation(s). The NRC report notes that the competitive framework established to reallocate quota at each new allocation cycle could work to preclude cooperation among the groups (NRC 1999). Although the groups have attempted to form a coordinating body to serve as a communications forum and liaison to Federal and State governments, differing priorities and the direct competition for allocations does not lend itself well to coordinated efforts.

The competitive allocations, although difficult due to the number of criteria provided and the varying needs and projects of the CDQ groups, have been a way for the State to both provide a fair and equitable division of the quota among communities and to help prevent mismanagement and induce better performance by the CDQ groups. While this dual goal may not be explicitly identified in regulation, the NRC report notes that State oversight seems to be driven by a mix of these two goals. The NRC notes that the actual allocation of quota seems to be based primarily on population and income levels—the CDQ region with the most people or the highest poverty level or both tend to get a larger quota. At the same time, the NRC reports that the allocation process is used to sanction or reward the groups' performance.

The pollock allocations resulting from the current competitive process are provided in Table 3.1. Pollock royalties have remained the largest source of revenue for the CDQ groups, accounting for over 86 percent of annual royalties in 2002, or over \$39 million (DCED 2003). The State reports that in 2002, the average price per metric ton for CDQ pollock was \$266.87, the second highest price since the inception of the CDQ Program. Applying this price to the 2004 pollock CDQ reserve (149,200 mt), one percent of the overall CDQ reserve represents 1,492 mt or an estimated \$398,000 in pollock royalties. Thus, the pollock allocations are typically the most important and controversial allocation undertaken by the State. From 1992 - 2002, the CDQ groups have received, in aggregate, approximately \$254 million in CDQ pollock royalties.

Table 3.1: Pollock CDQ Allocation Recommendations (percent of total pollock CDQ reserve)

CDQ Group	1992 - 93	1994 - 95	1996 - 98	1999	2000	2001 - 02	2003 - 05
APICDA	18	18	16	16	16	14	14
BBEDC	20	20	20	21	21	21	21
CBSFA	10	8	4	5	5	4	5
CVRF	27	27	25	22	22	24	24
NSEDC	20	20	22	22	22	23	22
YDFDA	5	7	13	14	14	14	14

The multispecies allocations determined under the current allocation process for the 2003 - 2005 allocation cycle are provided in Table 3.2, as provided by NMFS, Sustainable Fisheries Division. In addition to the allocations of target species, prohibited species quota for each group is determined using a formula based primarily on historical catch rates for target species. This is then applied to the percentage of each CDQ reserve allocated to each group. While all of the species allocations are crucial to the operations of each group, the target species of primary importance are pollock, Pacific cod, Bristol Bay King Crab, and halibut.

Table 3.2: 2004 Multispecies CDQ allocations for each CDQ group (in percent and mt)

Groundfish CDQ Species				2003-2005 CDQ Group Allocations							2004 CDQ Group Amounts						
Species or Species Group	Units	2004 TAC	2004 CDQ Reserve	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA	TOTAL	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA	TOTAL
BS Pollock - total	mt	1,492,000	149,200	14%	21%	5%	24%	22%	14%	100%	20888.000	31332.000	7460.000	35808.000	32824.000	20888.000	149200.000
A/B season (40%)	mt		59,680	14%	21%	5%	24%	22%	14%	100%	8355.200	12532.800	2984.000	14323.200	13129.600	8355.200	59680.000
C/D season (60%)	mt		89,520	14%	21%	5%	24%	22%	14%	100%	12532.800	18799.200	4476.000	21484.800	19694.400	12532.800	89520.000
AI Pollock	mt	1,000	0	14%	21%	5%	24%	22%	14%	100%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Bogoslof Pollock	mt	50	0	14%	21%	5%	24%	22%	14%	100%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Pacific Cod	mt	215,500	16,163	15%	21%	9%	18%	18%	19%	100%	2424.450	3394.230	1454.670	2909.340	2909.340	3070.970	16163.000
BS FG Sablefish	mt	1,450	290	15%	20%	16%	0%	18%	31%	100%	43.500	58.000	46.400	0.000	52.200	89.900	290.000
AI FG Sablefish	mt	2,325	465	14%	19%	3%	27%	23%	14%	100%	65.100	88.350	13.950	125.550	106.950	65.100	465.000
BS Sablefish	mt	1,450	109	21%	22%	9%	13%	13%	22%	100%	22.890	23.980	9.810	14.170	14.170	23.980	109.000
AI Sablefish	mt	775	58	26%	20%	8%	13%	12%	21%	100%	15.080	11.600	4.640	7.540	6.960	12.180	58.000
WAI Atka Mackerel	mt	20,660	1,550	30%	15%	8%	15%	14%	18%	100%	465.000	232.500	124.000	232.500	217.000	279.000	1550.000
CAI Atka Mackerel	mt	31,100	2,333	30%	15%	8%	15%	14%	18%	100%	699.900	349.950	186.640	349.950	326.620	419.940	2333.000
EAI/BS Atka Mackerel	mt	11,240	843	30%	15%	8%	15%	14%	18%	100%	252.900	126.450	67.440	126.450	118.020	151.740	843.000
Yellowfin Sole	mt	86,075	6,456	28%	24%	8%	6%	7%	27%	100%	1807.680	1549.440	516.480	387.360	451.920	1743.120	6456.000
Rock Sole	mt	41,000	3,075	24%	23%	8%	11%	11%	23%	100%	738.000	707.250	246.000	338.250	338.250	707.250	3075.000
BS Greenland Turbot	mt	2,700	203	16%	20%	8%	17%	19%	20%	100%	32.480	40.600	16.240	34.510	38.570	40.600	203.000
AI Greenland Turbot	mt	800	60	17%	19%	7%	18%	20%	19%	100%	10.200	11.400	4.200	10.800	12.000	11.400	60.000
Arrowtooth Flounder	mt	12,000	900	22%	22%	9%	13%	12%	22%	100%	198.000	198.000	81.000	117.000	108.000	198.000	900.000
Flathead Sole	mt	19,000	1,425	20%	21%	9%	15%	15%	20%	100%	285.000	299.250	128.250	213.750	213.750	285.000	1425.000
Other Flatfish	mt	3,000	225	26%	24%	8%	8%	8%	26%	100%	58.500	54.000	18.000	18.000	18.000	58.500	225.000
Alaska Plaice	mt	10,000	750	14%	21%	5%	24%	22%	14%	100%	105.000	157.500	37.500	180.000	165.000	105.000	750.000
BS Pacific Ocean Perch	mt	1,408	106	17%	21%	6%	21%	19%	16%	100%	18.020	22.260	6.360	22.260	20.140	16.960	106.000
WAI Pacific Ocean Perch	mt	5,187	389	30%	15%	8%	15%	14%	18%	100%	116.700	58.350	31.120	58.350	54.460	70.020	389.000
CAI Pacific Ocean Perch	mt	2,926	219	30%	15%	8%	15%	14%	18%	100%	65.700	32.850	17.520	32.850	30.660	39.420	219.000
EAI Pacific Ocean Perch	mt	3,059	229	30%	15%	8%	15%	14%	18%	100%	68.700	34.350	18.320	34.350	32.660	41.220	229.000
Northern (BSAI)	mt	5,000	375	0%	0%	0%	0%	0%	0%	0%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Shortraker (BSAI)	mt	526	39	0%	0%	0%	0%	0%	0%	0%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Rougheye (BSAI)	mt	195	15	0%	0%	0%	0%	0%	0%	0%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
BS Other Rockfish	mt	460	35	21%	19%	7%	17%	17%	19%	100%	7.350	6.650	2.450	5.950	5.950	6.650	35.000
AI Other Rockfish	mt	634	48	21%	18%	8%	17%	17%	19%	100%	10.080	8.640	3.840	8.160	8.160	9.120	48.000
Other Species	mt	27,205	2,040	0%	0%	0%	0%	0%	0%	0%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
(total)		1,998,725	187,600														
Prohibited Species																	
Zone 1 Red King Crab	numbers	197,000	14,775	24%	21%	8%	12%	12%	23%	100%	3,546	3,103	1,182	1,773	1,773	3,398	14,775
Zone 1 Bairdi Tanner Crab	numbers	980,000	73,500	26%	24%	8%	8%	8%	26%	100%	19,110	17,640	5,880	5,880	5,880	19,110	73,500
Zone 2 Bairdi Tanner Crab	numbers	2,970,000	222,750	24%	23%	8%	11%	10%	24%	100%	53,460	51,233	17,820	24,503	22,275	53,460	222,751
Opilio Tanner Crab	numbers	4,350,000	326,250	25%	24%	8%	10%	8%	25%	100%	81,563	78,300	26,100	32,625	26,100	81,563	326,251
Pacific Halibut	mt mort.	4,575	343	22%	22%	9%	12%	12%	23%	100%	75.460	75.460	30.870	41.160	41.160	78.890	343.000
Chinook Salmon	numbers	29,000	2,175	14%	21%	5%	24%	22%	14%	100%	305	457	109	522	479	305	2,177
Non-Chinook Salmon	numbers	42,000	3,150	14%	21%	5%	24%	22%	14%	100%	441	662	158	756	693	441	3,151
Halibut CDQ																	
Halibut 4B	lbs	2,810,000	562,000	100%	0%	0%	0%	0%	0%	100%	562,000.00	0.00	0.00	0.00	0.00	0.00	562,000.00
Halibut 4C	lbs	1,720,000	860,000	15%	0%	85%	0%	0%	0%	100%	129,000.00	0.00	731,000.00	0.00	0.00	0.00	860,000.00
Halibut 4D	lbs	1,720,000	516,000	0%	26%	0%	24%	30%	20%	100%	0.00	134,160.00	0.00	123,840.00	154,800.00	103,200.00	516,000.00
Halibut 4E	lbs	345,000	345,000	0%	30%	0%	70%	0%	0%	100%	0.00	103,500.00	0.00	241,500.00	0.00	0.00	345,000.00
Crab CDQ																	
Bristol Bay Red King Crab	lbs			17%	19%	10%	18%	18%	18%	100%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Norton Sound Red King Crab	lbs			0%	0%	0%	0%	50%	50%	100%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Pribilof Red & Blue King Crab	lbs			0%	0%	100%	0%	0%	0%	100%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
St. Matthew Blue King Crab	lbs			50%	12%	0%	12%	14%	12%	100%	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Bering Sea C. Opilio Crab	lbs	23,663,129	1,774,735	8%	20%	20%	17%	18%	17%	100%	141,978.800	354,947.000	354,947.000	301,704.950	319,452.300	301,704.950	1,774,735.000
Bering Sea C. Bairdi Crab	lbs			10%	19%	19%	17%	18%	17%	100%	0.000	0.000	0.000	0.000	0.000	0.000	0.000

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In preparation for the 2003 - 2005 multispecies allocation process, the State used the 2000 census data to determine community information on the number of households, median income levels, percentage of residents under the poverty guidelines, percentage of adults not in the workforce, and whether the community had adequate water and sewer facilities. In the findings provided to NMFS on the allocations, the State notes that it accounted for these more objective factors in the decision-making process, as well as the performance of each group. The performance of each group was weighed with respect to both the group's financial return and its accomplishment of social objectives such as employment levels, educational opportunities, and management positions within each organization (DCED 2002).

Changes continue to be made to the State allocation recommendations due to the continuing growth and experience of the CDQ groups. For instance, some groups may have received a larger pollock allocation in the beginning of the program, in part because of that region's proximity to the fishery and past experience. However, as other groups gain experience in the fisheries and demonstrate the ability to capitalize on their experience, the allocations may change slightly to reflect the maturation of the groups across the program.

Although the primary concerns regarding the State's allocation recommendations have typically been with the pollock allocations, the State recommended changes to other allocations in the 2003 - 2005 cycle which also appear to balance equity and performance factors. In addition, in order to provide the CDQ groups with increased transparency in the allocation process, the State provided more lengthy private meetings with the CDQ groups and used a scorecard for each group for the first time. The scorecard identified numerical scores given by each state team evaluator in broad categories constructed around evaluation criteria in State regulations: Population and Economic Need; CDP Achievement; Community, Regional and Statewide Benefits; Community Outreach and Involvement; Management Effectiveness; and CDQ Program Standards (DCED 2002). Scores were provided to each group on a scale of 1 to 10, however, individual categories were weighted differently and cumulative scores were not issued. Each group received confidential comments from the State providing more details on the scores. While the scorecard was intended as a tool to help the State and the groups identify and resolve problems, some of the groups contend that the usefulness of the scorecard is extremely limited in that there is no direct link between the scorecards and the allocations.

In addition to the performance and objective factors used in the evaluation criteria, both the crab and halibut allocations are based partially on the proximity of the groups to fishing grounds for those species. Federal regulations specify that the halibut CDQ is allocated to communities within, or in close proximity to, the regulatory area, thus encouraging the development of local fisheries. For instance, there are only two communities located in Area 4C, St. Paul and St. George, thus CBSFA and APICDA receive all of the halibut CDQ for that area. Likewise, APICDA receives the entire Area 4B halibut allocation, as its communities make up the whole of the western Aleutians. The State noted that efforts to utilize halibut for the direct benefit of local residents through small boat fisheries was encouraged through adjustments to the halibut allocations. Similarly, while partially allocated based on the projected royalty returns, the crab species are allocated based on a CDQ group's communities' locations and proximity to the fishery.

In the upcoming allocation process for 2006 - 2008, the State would continue to make these complicated, multi-criterion decisions, and attempt to balance factors such as poverty level, population, and proximity with more subjective performance criteria such as the groups' financial returns, effectiveness in meeting the milestones identified in the CDPs, success in developing local fisheries, and ability to provide training, educational, and employment opportunities. The CDQ groups have expressed confusion in the past over how the evaluation criteria are applied by the State, specifically to what extent more objective factors such as population and income are weighted. This confusion appears to result, at least partially, from using the criteria for the two purposes mentioned previously: to maintain equity among the groups and to encourage good performance.

4.0 IMPACTS OF THE ALTERNATIVES

This section provides information on the policy, regulatory, economic, and socioeconomic impacts of the alternatives, including the nature of the impacts, quantifying the economic impacts when possible, and discussion of the tradeoffs between benefits and costs. The groups that may be affected by the action are described in Section 2.0. That section provides information on the eligible communities, the organizational structure of the CDQ groups, and information on the CDQ allocated to each group since the implementation of the program. The nature of the action and the alternatives and options under consideration lend themselves to a more qualitative analysis of the impacts and a general policy discussion in several instances. However, quantitative analysis is included, when it is appropriate to evaluate the impacts of an alternative and data are available.

As described in Section 1, the RIR is designed to provide information to determine whether the proposed regulation is likely to be “economically significant” under E.O. 12866. A “significant regulatory action” is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

4.1 Description of the Alternatives

The following alternatives are considered in this document to more effectively define what types of projects or investments the CDQ groups are allowed to undertake with CDQ revenues and to potentially expand those allowable investments to include non-fisheries related projects. The alternatives represent a broad scope of potential changes to the program, from continuing to require that all revenues be spent on fisheries-related investments and projects (with very limited exceptions), to no restrictions on what the CDQ groups may spend money on or what type of projects they may invest in.

Alternative 1: No Action. NMFS regulations implement what NMFS understood as the Council’s intent, that the revenue generated by the CDQ allocations is to be spent on “fisheries-related” investments and projects to benefit the communities that are eligible for the CDQ Program. From NMFS regulations at 50 CFR 679.1(e):

The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries-related economy.

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Alternative 2: Continue to require that the CDQ groups invest only in “fisheries-related” projects, but clarify NMFS regulations as follows:

- Add specific prohibition against CDQ groups investing in non-fisheries related projects; and
- Clarify that this prohibition does not apply to certain categories of expenditures or investments, such as investment accounts or scholarships. Focus regulations on economic development projects.

Alternative 3: (preferred alternative) Revise NMFS regulations to allow investments in non-fisheries related projects. The following options represent the annual maximum amount of investment in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

Option 1: Allow each CDQ group to invest up to 5 percent of their **pollock** royalties in non-fisheries related projects.

Option 2: **(preferred alternative)** Allow each CDQ group to invest up to 20 percent of their **pollock** royalties in non-fisheries related projects.

Option 3: Allow each CDQ group to invest a maximum of \$500,000 in non-fisheries related projects.

Option 4: Allow each CDQ group to invest up to 50 percent of **total revenues** in non-fisheries related projects.

Option 5: Allow each CDQ group to invest a maximum of \$1 million in non-fisheries related projects.

Suboptions for Alternative 3 related to limits on non-fisheries related investments:

Suboption 1: **(preferred alternative)** Require that any non-fisheries related investment be made in economic development projects in the region of Alaska represented by the CDQ group and be self-sustaining.

Suboption 2: Require that any non-fisheries related projects be:

(A) for education, vocational training, scholarships, or other human resource programs for residents of the CDQ communities; or

(B) community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group.

Suboptions for Alternative 3 related to the goals and purpose of the CDQ Program:

Suboption A: The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (*additions to existing regulations are underlined*):

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible western Alaska communities primarily to provide the means for investing in, participating in, starting, or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries economy, and secondarily to

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strengthen the non-fisheries related economy in the region.

Suboption B: The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (*additions to existing regulations are underlined and deletions are stricken*):

The goals and purpose of the CDQ Program are to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, ~~fisheries-related~~ diversified economy.

Suboption C: **(preferred alternative)** The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (*additions to existing regulations are underlined and deletions are stricken*):

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries economy and, as a secondary priority, to strengthen the non-fisheries related economy in the region.

Alternative 4: No restrictions on what the CDQ groups may spend money on or what type of projects they may invest in. (*May represent intent of H.R. 553*)

Suboption for Alternative 4 related to the goals and purpose of the CDQ Program:

Suboption A: Revise the goals and purpose of the CDQ Program as proposed in H.R. 553:

The goals and purpose of the CDQ Program are: (A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development.

4.2 Alternative 1: No action

Alternative 1 would maintain the current Federal regulations which implement the Council's original intent to restrict spending of the revenue generated by the CDQ allocations to fisheries-related investments and projects to benefit the communities that are eligible for the CDQ Program. NMFS regulations currently state (50 CFR 679.1(e)):

The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries-related economy.

In the BSAI FMP, the Council expressed that the purpose of the CDQ Program is to provide a fair and reasonable opportunity to participate in the BSAI groundfish fisheries, expand participation in the salmon, herring, and other nearshore fisheries, and to help western Alaska communities diversify their local economies. However, in creating the program, the Council also expressed its intent that the CDQ allocations be used to develop a "self-sustaining fisheries economy." This intent was related throughout the Council's discussions of community eligibility during the development of the program and was emphasized in the criteria and procedures document adopted by the Council at that time (NPFMC 1992).

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The 1992 guidance document specified the criteria for evaluating the CDPs, which were eventually translated into a list of twenty criteria in State regulation (6 AAC 93.040). Several of the criteria expressly tie the CDQ allocations to fisheries-related investments and projects, and this stems directly from the Council's intent. As reflected in the guidance document, the primary basis for determining the merit of a CDP was to include: the goals and objectives of the project and the identification of realistic and measurable milestones for determining progress; the degree to which the project will develop a self-sustaining local fisheries economy; the level of local employment the project will generate; the degree to which the project will generate capital or equity for local fishing infrastructure or investment in fishing or processing operations; and the degree to which profits will be used to assist in the development of a self-sustaining local fisheries economy.

Thus, both the Council's 1992 criteria and procedures and the transcripts of the relevant Council meetings identify that the Council intended for CDQ program revenues to be restricted to fisheries-related projects and investments, and the Federal and State regulations that followed were based upon this direction. Therefore, while there may be general disagreement regarding whether the CDQ Program should restrict the CDQ groups to fisheries-related projects, the current NMFS regulations conform to the Council's original intent. Assuming this policy decision is maintained, there is a related issue regarding what type of investment is allowable under the status quo.

The CDQ Team has generally asserted that for-profit CDQ investments must have a "tangible link" with the commercial fishing industry, and the resulting evaluation criteria developed for the allocation process is focused on developing the fishing industry in the region. While the current Federal and State regulations do not include specific investment guidelines or a list of allowable investments, the CDQ Team has related that a tangible link includes, but is not limited to:⁷

- A direct investment into the commercial fishing industry (example: harvesting vessel, tender vessel, gear, etc.)
- Investment in businesses which deal with a physical input or output of the fishing industry (example: input - gear, equipment, fishing supplies; output - fish buyer)
- Investment in businesses which provide a service which directly facilitates the fishing industry (example: engine repair, net repair, gear storage facility, seafood distributor, etc.)

While the CDQ groups are technically restricted to investments in projects that are fisheries-related, some decisions about allowable projects have been made by policy or practicality. The financial summaries of the CDQ groups provided in Section 2.0 demonstrate that the great majority of the CDQ groups' projects are fisheries-related, consistent with the program's intent. It is difficult to determine from the financial statements the exact percentage of total expenditures attributed to non-fisheries related activities, but it appears to be relatively small and limited to non-profit investments. For example, CDQ groups provide college scholarships without restricting the program of study to "fisheries-related." Investments in substance abuse programs are not restricted to people working in fisheries-related businesses. The CDQ groups' investment accounts include stocks, bonds, and other financial instruments which are also not fisheries-related. Several groups have also created reserve accounts, as a type of savings account for the entire organization that can be used for future investments, scholarships, or vocational training. At least one group has established a charitable foundation under their umbrella CDQ corporation. While these types of activities have not been discouraged by State or Federal managers, they are not clearly identified in regulation as categorically exempt from the requirement that CDQ projects be fisheries-related.

⁷As stated in correspondence between the Dept. of Community and Regional Affairs (now encompassed in DCED) and a CDQ group, 1997.

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Currently, the allocation process is the mechanism by which the CDQ groups' investments are kept within the bounds of the program's intent, including some exceptions for expenditures on not-for-profit, community-based activities that are not fisheries-related. Specific CDQ projects which have been rejected by the State or viewed with a high degree of skepticism include: a car rental service, auto parts store, tour lodge, and hairdresser training. While each of these investments can be linked to supporting the fishing industry on some level, none of them were viewed as essential components of a viable commercial fisheries economy (DCRA 1997). One common concern of the CDQ groups has been the uncertainty surrounding allowable investments and the lack of guidance in Federal regulation. A potential negative impact of Alternative 1 is that the CDQ groups would likely continue to develop their CDPs without a clear understanding of the types of projects authorized under the CDQ Program.

Another potential negative impact of Alternative 1 stems from the diverse nature of the CDQ communities and CDQ groups and the effect the fisheries-related restriction has on their community development strategies. The NRC report (1999) notes that, while the CDQ Program has two objectives—community development and fishery development—"community development" is defined as "fishery development." The NRC questions the merit of this approach, and found that while there are advantages to a fisheries program that encourages continued investment in, and improvement of, fishery resources and fishing capacity, the strict requirement to make all investments fisheries-related may be detrimental to the program overall. The NRC cites examples in communities in which viable fisheries-related investments have been fully exploited or communities with limited fisheries-related investments that would not likely provide a reasonable return. In addition, some of the communities are several miles (up to 50 nm) from the Bering Sea, thus a significant amount of the economic activity in those communities will be land-based. It may be more difficult to find fisheries-related investments that have a reasonable chance of success in these inland communities, especially considering the low salmon returns of recent years. At some point, for lack of viable opportunities, the fisheries-related restriction may force a CDQ group to undertake an investment that is not a good business decision and/or would not promote economic diversity and sustainability at the community level.

At the same time, a CDQ group may be forced to forego a good business investment in a non-fisheries related project in a CDQ community due to the fisheries restriction. Some of the most economically challenged and remote communities may find it more difficult to engage in the BSAI fisheries on a community-level, but have other local investment opportunities that would benefit from financial support. CVRF is one example of a group representing such communities. CVRF has been interested, but unable to invest in, a local reindeer farm on Nunivak Island for several years. The Nuniwarmiut Reindeer and Seafood Processing Company averages 15 employees, and is a critical economic arm of Mekoryuk, the only village on the island (Howk, 2003). The manager of the facility notes that increased funding of the facility could allow year-round employment of up to 20 employees, provide for more effective management of the herd, and result in a better product (Weston, 2004). Support for this project was proposed by CVRF in its 2003 CDP, but was not approved by NMFS due to the non-fisheries related nature of the project.⁸ This is one example of a business in a CDQ community that could benefit from support via CDQ revenues and could also provide the CDQ group with a profitable investment and employment opportunities for its member residents.

The NRC developed an argument for expanding the definition of community development to more than fisheries-related investments, based on the concerns discussed above. In addition to the concern with having to forego investments in self-sustaining economic development projects in the region, because they are not

⁸Note that while the name of the company is the "Nuniwarmiut Reindeer and Seafood Processing Company," the project proposed was not seafood processing related in any way. The proposed investment was solely in the reindeer farm.

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fisheries-related, the NRC noted that many investment needs such as general infrastructure, health clinics, recreation centers, schools, improved roads, water and sewerage systems, and fire protection would potentially better serve some of these villages to meet the goal of community development than projects that are strictly fisheries-related.

In sum, some groups may have member communities with limited fishery-related opportunities and/or non-fisheries related investment needs that would greatly contribute to community development. Alternative 1 may cause a CDQ group to shape their CDP around questionable business decisions in order to make fishery-related investments at the community level. This may ultimately affect the group's performance and provide reason for the State to reduce their share of the total allocation in the future. Thus, to the extent that there are viable fishery-related investments in the member communities that promise reasonable returns on investments, the NRC recommends that these should be pursued. However, given the different resource situations, economic circumstances, and goals among the groups, the NRC suggests relaxing the fisheries-related requirement in order to promote community development in the most effective and practical way possible. This argument lends itself to expanding the definition of allowable projects by CDQ groups, but retaining a priority on fisheries-related investments within the program.

Alternative 1 would maintain the current regulations which implement the Council's original intent that CDQ projects and investments be fisheries-related. This would effectively continue to restrict the CDQ groups to investments in fisheries-related projects, with some exceptions related to scholarships and other investments. These exemptions would not be specified in regulation and there would be no identified limit on the amount of money a CDQ group could spend on these activities. If a CDQ group proposed a project in its CDP that did not appear to fall into the generally accepted category of non-fisheries related activities, it would be notified of this by the CDQ Team, likely in interactions during the allocation process.

4.3 Alternative 2: Clarify regulations

Alternative 2 would continue to require that the CDQ groups invest only in "fisheries-related" projects, but clarify NMFS regulations as follows:

- Add specific prohibition against CDQ groups investing in non-fisheries related projects; and
- Clarify that this prohibition does not apply to certain categories of expenditures or investments, such as investment accounts or scholarships.

The State currently makes complicated, multi-criterion decisions in allocating quota to CDQ groups. A perpetual concern of the CDQ groups is that the allocation criteria used by the State and the application of those criteria are not identified in Federal regulation. Related to that issue is which types of projects should be considered fisheries-related projects. Granted there exists some disagreement about whether the current language in the BSAI FMP and existing Federal regulations prohibit non-fisheries related investments, or whether the goal of "diversified local economic development" connotes a broader purpose. However, assuming that the Council's intent was interpreted correctly in Federal regulations to mean that the CDQ allocations should be used to develop a "self-sustaining fisheries economy," this issue will not be debated here. The discussion under Alternative 1 explains the origin of the Council's intent and provides evidence that the current Federal and State regulations prohibiting most non-fisheries related investments are consistent with that intent. Thus, the issue under Alternative 2 is whether that intent needs to be further articulated and codified in Federal regulations.

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Alternative 2 would result in a definitive prohibition on non-fisheries related projects in Federal regulation, with the clarification that certain categories of expenditures are exempt from this restriction. The exemptions would relate to the current activities of the CDQ groups described under Alternative 1 that are non-fisheries related but generally accepted by Federal and State managers. To clarify, the regulations that would implement the intent of this proposed alternative would likely:

- create a section in the regulations for allowable investments and expenditures
- explicitly state that non-fisheries related economic development projects and investments are prohibited
- list the types of expenditures or investments that are allowed, including
 - 1) Administrative expenses of the CDQ group.
 - 2) Investments of cash in financial instruments such as stocks, bonds, certificates of deposit.
 - 3) Investments in fisheries-related economic development projects.
 - 4) Education, scholarships, and training.
 - 5) Charitable contributions.

The list of allowable investments above encapsulates the types of investments that the CDQ groups are currently undertaking, whether they are fisheries or non-fisheries related. These investments have been generally accepted by the CDQ Team and determined to be within the bounds of the program's intent. There is not currently an annual limit on any of these types of expenditures, as the allocation process has been an effective mechanism by which government managers have overseen the groups' investment activities. Because the allocation process remains the primary oversight mechanism, any policy decision to limit the amount of investment in one or more of these categories should be explicitly addressed in the evaluation criteria and Federal regulations.

Additionally, the list of allowable investments captures the intent of Alternative 2 and defines in regulation the types of investments that would be allowed with no annual limit. One category of significance is that of education, scholarships, and training. Education and training have been identified as a key part of the CDQ program and a primary element in ensuring the program's success (NRC 1999). The CDQ communities depend on members of the community acquiring skills and knowledge to attain stable employment as part of the overall goal of community development. While most education and training can be tied to support of the fishing industry on some level, the CDQ Team recognizes that many students are interested in careers that are not fisheries-related. Thus, it has not been required that students receiving scholarships from the CDQ groups enroll in fisheries-related studies.

There has been some confusion, however, related to allowable training opportunities. While most training to-date has been fisheries-related, some training has not been approved by the CDQ Team because it was not deemed an essential part of a viable fisheries-related economy. The State notes that each group provides training for residents based not only on the needs of individuals but on the needs of the community. Given that educational scholarships are not restricted to fisheries-related studies, limiting training opportunities to those that are fisheries-related seems an inconsistent and unnecessary restriction. Thus, it seems appropriate to allow all types of training and educational investments for individuals without requiring a distinction between those that are fisheries-related and those that are not. However, the purpose of Alternative 2 is to clarify in regulation the types of allowable investments. Thus, should the Council prefer to limit training to fisheries-related fields, this should be made explicit and stated in the implementing regulations.

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Primary Impacts of Alternative 2

The primary benefit of Alternative 2 is that it would enable the CDQ groups to have a clear understanding of the allowable investments under the program and provide a reference in Federal regulation to develop and support the investments proposed in the CDPs. Alternative 2 would eliminate some of the subjectivity in the allocation process by making explicit each type of allowable investment in Federal regulation. This could potentially save CDQ managers and the CDQ groups considerable time and effort in debating the fisheries-related merit of a project, while regulating a certain level of non-fisheries related investments that are generally acceptable and already being undertaken by the CDQ groups. This alternative is not intended to either further restrict the CDQ groups' investment opportunities or to broaden the type of allowable investments.

Another benefit of Alternative 2 is that it provides a basis in regulation to ensure that the program is consistent with the Council's intent. Currently, the allocation process is the mechanism by which the CDQ groups' investments are kept within the bounds of the program's intent, including some exceptions for expenditures on not-for-profit, community-based activities that are not fisheries-related. Explicitly limiting the majority of the CDQ investments to fisheries-related activities allows the CDQ Team to ensure that the benefits of the program are being used to build a "self-sustaining fisheries economy," as expressed by the Council in 1992.

The primary negative impact of Alternative 2 mirrors that of the status quo. Although the program would benefit from clarifying allowable investments in NMFS regulations, the economic development projects of the CDQ groups would continue to be restricted to those that are fisheries-related. This may be considered a negative impact in the context of the NRC recommendations, considering that some communities are currently experiencing diminishing opportunities for viable fisheries related projects, and this situation will likely continue in the future.

Given this possibility, the combination of the competitive allocation process and the restriction to fisheries-related projects can create a perverse policy argument. The CDQ groups are evaluated on their financial performance and the merits of the proposed investments, as well as their ability to maximize the benefits to the communities in the region. Thus, there is great incentive for the CDQ groups to manage effectively and make good business decisions, as well as provide benefits to as many communities in the region as possible. Because some communities may not have viable fisheries-related opportunities, some groups may choose to engage in fisheries-related projects that are less than ideal in order to benefit their member communities equitably and satisfy the fisheries-related requirement. Other groups may focus their investments in one part of the region because of the limited availability of viable investment opportunities. The result is that groups may ultimately be penalized in the allocation process for either poor financial performance or not equitably distributing investments among the member communities. If the two goals become conflicting at some point in the future, it will provide a difficult operating environment for the CDQ groups.

Finally, while the education and training investments allowable under the program would not be affected by this alternative, unless the local communities are able to diversify their economic base, residents who gain education and skills in non-fishing related specialties may not find employment opportunities in their home communities. These educated (and mostly young) persons may be compelled to emigrate to other locations, which will diminish the residual contribution of the CDQ Program to community and regional development. Both outcomes undermine the basis of the CDQ objectives, and may represent a direct 'cost' of restricting the CDQ groups to only fisheries-related investments (with noted exceptions) under Alternative 2.

Alternative 2 would establish acceptable CDQ investments in Federal regulation and explicitly prohibit investments in economic development projects that are not fisheries-related. This alternative would continue

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to restrict the CDQ groups primarily to investments in fisheries-related projects, with some exceptions related to not-for-profit projects such as scholarships and other investments. These exemptions would be defined in regulation without an identified limit on the amount of money a CDQ group could spend on these activities. Any policy decision to limit the amount of investment in one or more of these categories should be explicitly addressed in the evaluation criteria and Federal regulations.

4.4 **Alternative 3: Allow investments in non-fisheries related projects (preferred alternative)**

Alternative 3 would revise the current Federal regulations to allow CDQ groups to invest in non-fisheries related projects up to a particular amount. The following options represent the annual maximum amount of investment that would be allowed in non-fisheries related projects. Each CDQ group would decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum. Note also that the limit would be based on the previous year's royalties or revenues, as specified in the option, so that each group's limit would be identified before the fishing season starts on January 1.

- Option 1: Allow each CDQ group to invest up to 5 percent of their pollock royalties in non-fisheries related projects.
- Option 2: **(preferred alternative)** Allow each CDQ group to invest up to 20 percent of their pollock royalties in non-fisheries related projects.
- Option 3: Allow each CDQ group to invest a maximum of \$500,000 in non-fisheries related projects.
- Option 4: Allow each CDQ group to invest up to 50 percent of total revenues in non-fisheries related projects.
- Option 5: Allow each CDQ group to invest a maximum of \$1 million in non-fisheries related projects.

Suboptions for Alternative 3 related to limits on non-fisheries related investments:

- Suboption 1: **(preferred alternative)** Require that any non-fisheries related investment be made in economic development projects in the region of Alaska represented by the CDQ group and be self-sustaining.
- Suboption 2: Require that any non-fisheries related projects be:
 - (A) for education, vocational training, scholarships, or other human resource programs for residents of the CDQ communities; or
 - (B) community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group.

Suboptions for Alternative 3 related to the goals and purpose of the CDQ Program:

- Suboption A: The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (*additions to existing regulations are underlined*):

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The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible western Alaska communities primarily to provide the means for investing in, participating in, starting, or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries economy, and secondarily to strengthen the non-fisheries related economy in the region.

Suboption B: The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (*additions to existing regulations are underlined and deletions are stricken*):

The goals and purpose of the CDQ Program are to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, ~~fisheries-related~~ diversified economy.

Suboption C: **(preferred alternative)** The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (*additions to existing regulations are underlined and deletions are stricken*):

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries economy and, as a secondary priority, to strengthen the non-fisheries related economy in the region.

The NRC report, H.R. 553, and the Council's CDQ Policy Committee all contributed to the interest in this alternative to the current implementation of the CDQ Program. The NRC recommendations and the proposed legislation in H.R. 553 are described first in this section, followed by a general discussion of the impacts of the proposed options and suboptions. Finally, the CDQ Policy Committee's recommendations on this issue are provided at the end of this section.

The NRC recommended that, over time, there should be more flexibility in the rules governing the allocation of benefits in the CDQ Program. The NRC noted that perhaps the program should require most benefits to be reinvested in fishing and fisheries-related activities, but allow some benefits to go to other community development activities. This is in response to the idea that there may come a time when the restriction on investment opportunities will force the CDQ boards to make investments that may not promote economic diversity and sustainability at the village level, or will force them to undertake less than ideal investments. The NRC believes that adding flexibility will better suit the long-term goal of the program, which is development of economic opportunities for western Alaska communities.

Note that, while the NRC recommends expanding the range of projects available to the CDQ groups, there is also the consideration of whether the groups should be restricted to investments in economic development projects located in the region of Alaska represented by the CDQ group. It is uncertain whether the NRC recommendation depends on this factor, but it appears that it may. The NRC focused its rationale to broaden the type of allowable investments on the "many [non-fisheries related] investment needs in these villages that would contribute materially to community development" (NRC p. 76). The NRC cites examples such as the development of general infrastructure, health clinics, recreation centers, schools, improved roads, water and

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sewerage systems, and fire protection. The NRC did not specifically address the issue of allowing CDQ groups to invest in projects that would not be related to community development and are not within the CDQ communities. The NRC also did not differentiate between allowing general infrastructure projects that would not be expected to provide a financial return to the CDQ groups and economic development projects that would be expected to provide a financial return to the CDQ groups.

Alternative 3 also appears to encompass one of the central ideas of the legislation proposed in 2001 by Representative Young. H.R. 553 specified that the purpose of the CDQ Program is: “(A) to afford eligible communities a fair and equitable opportunity to participate in the Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development.” This statement of purpose is very similar to the current wording of the BSAI FMP with respect to the CDQ Program. However, as discussed previously, when creating the CDQ Program the Council also expressed its intent that the CDQ allocations be used to develop a “self-sustaining fisheries economy”(emphasis added). As a result of this expression of intent by the Council, the current regulations require the CDQ groups to invest only in fisheries-related projects. The intent of the statement of purpose in H.R. 553, while not entirely clear, could be interpreted as expanding the allowable investments by the CDQ groups to non-fisheries related projects that would promote diversified local economic development.⁹

A related question to this overall issue that surfaced in public testimony is whether revenues generated originally from fisheries-related investments may be considered “fisheries-related” in perpetuity and thus acceptable under the current program to use in any way the CDQ groups wish. Stated another way, since all CDQ revenues are ultimately derived from the royalties generated by the CDQ allocations, which are clearly fisheries-related, is it then acceptable to spend those “second generation” revenues on non-fisheries related projects and still meet the original intent of the CDQ Program.

This question, which is related to the potential for allowing non-fisheries related investments addressed under the alternatives, focuses on the *source* of the CDQ revenues and whether tying the origin of the revenue to an activity or investment that is fisheries-related is sufficient to meet the fisheries-related requirement of the program, even if you do not *spend* the revenue on further fisheries-related investments. The significant difference between this concept and that proposed under the alternatives is that the alternatives under consideration are solely focused on monitoring the *use* of CDQ funds and limiting the amount of revenue used on non-fisheries related projects, while the concept discussed in public testimony is related to the *source* of those funds. The implication is that if the source were fishing-related, there would be no restrictions on what the CDQ groups could spend their money on and no further government monitoring of its use.

There is currently a wide range of alternatives proposed for allowing some level of non-fisheries related investment under Alternatives 3 and 4. The Council did not ask for a specific alternative to be included to represent the concept of monitoring the *source* of the funds, but the potential result of the interpretation above is that, because all of the revenues of the CDQ groups were originally generated from the CDQ allocations (directly fishing-related), the CDQ groups would not have any restrictions regarding their investments. This effectively has the same result as Alternative 4 and the impacts of such an alternative are discussed in Section 4.5.

⁹No action was taken on H.R. 553 in the 107th Congress, and staff is unaware of the introduction of a bill with similar scope in the 108th Congress. The bill is noted here on the basis that its proposals contributed to the discourse surrounding these issues, and provided an impetus to consider similar alternatives in this analysis. Specifically, the proposal to allow CDQ groups to invest in non-fisheries related projects was included in this analysis for consideration.

4.4.1 Primary impacts of Alternative 3, Options 1 - 5

Options 1 - 5 do not limit the type of non-fisheries related projects allowed. The overall effect is that the CDQ group would be allowed to invest in any type of project for the benefit of the communities it represents, regardless of the nature and location of the project, up to the annual limit specified in Options 1- 5. It is assumed that the determination of the annual limit for a given year would be based on the CDQ groups' royalties or revenues from the previous year. Under Options 1 - 5 alone, the range of potential projects could include such investments as: a water and sewer project in a CDQ community; a golf course located outside of the region; a hunting lodge in the region; a reindeer farm in a CDQ community; an investment in a non-profit organization; or an unencumbered grant made directly to a CDQ community. Regardless of the type of non-fisheries related projects undertaken by the CDQ groups, the groups would be required to stay within the determined annual limit on non-fisheries related projects, and they would need to continue to show that their member communities are benefitting from the group's overall activities. The decision points (Suboptions 1 and 2) related to the location and type of non-fisheries projects are in the following section.

Information about the impact of Alternative 3 on individual CDQ groups is not provided, due to the fact that the royalty and revenue data for each group is considered confidential. The discussion in this section therefore presents the impact of Alternative 3 either collectively for all six CDQ groups or as a range.

Option 1

Option 1 would allow the CDQ groups to invest up to 5 percent of their pollock royalties, annually, in non-fisheries related projects. Based on the 2002 CDQ pollock royalties reported by the State of about \$39.6 million, **Option 1 would have allowed almost \$2.0 million in CDQ pollock royalties to be used toward non-fisheries related projects in 2003.** Overall, this represents about 4.3 percent of the total CDQ royalties derived from all species allocations in 2002, and about 2.8 percent of total revenues.

Due to the variation in pollock allocations and prices among the groups, some groups would be able to spend more on non-fisheries related projects under this option than others. For instance, using the most recent (2004) pollock allocations (shown in Table 3.2) and the 2002 average royalty rate of \$266.87 per metric ton,¹⁰ the amount each group would be allowed to spend on non-fisheries related projects under this option ranges from about \$100,000 to \$478,000, a difference of approximately \$378,000. In addition, each CDQ group has a different number of member communities in which to distribute benefits. The amount each group would be able to spend on non-fisheries related projects per community (if distributed equally among member communities) ranges from about \$24,000 to \$100,000. Thus, the impact of this option will vary among the CDQ groups depending on the structure of any annual royalties received by each group. The impact of this option also will depend on annual changes in the pollock TAC and each group's pollock allocation, as well as the composition, nature, and rate of profitability of the suite of investments entered into by each group. This is, of course, no different from comparing any six individual investors. Each will have different resources, opportunities, and needs. One would not expect 'equality' across individuals, nor should one expect 'equality' across CDQ groups.

Option 2 (preferred alternative)

Option 2 would allow the CDQ groups to invest up to 20 percent of their pollock royalties in non-fisheries related projects. **Using 2002 as an example, 20 percent of the total CDQ pollock royalties is \$7.9 million.** Overall, this represents about 17.2 percent of the total CDQ royalties derived from all species allocations in 2002, and about 11.2 percent of total revenues.

¹⁰This is the most recent audited data available, provided in the State CDQ Handbook, July 2003.

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Given the most recent pollock allocations (2004) and the average royalty rate for 2002, the amount each group would be allowed to spend on non-fisheries related projects under this option ranges from about \$398,000 to \$1.9 million, a difference of approximately \$1.5 million. Thus, compared to Option 1, Option 2 increases the difference in the total amount each group may spend on non-fisheries related projects. Based on the current structure of the CDQ groups, the amount each group would be able to spend on non-fisheries related projects per community ranges from about \$96,000 to \$398,000. Thus, even though a group may have a significantly higher total allowable amount for non-fisheries projects, due to a larger pollock allocation, the allowable amount on a per community basis may be much smaller than a group with a much lower pollock allocation representing only one community. The fact that the alternatives result in allowing the CDQ groups to spend differing amounts of revenue on non-fisheries projects per community is expected and consistent with the structure of the CDQ Program. The pollock quota is not currently allocated on a per capita basis, but rather using a multi-criteria system designed by the Council to achieve specific objectives. The fact that various groups receive different amounts of pollock CDQ each allocation cycle is thus a programmatic outcome, consistent with Council intent, and subject to change should the Council so choose.

Option 3

Option 3 would allow each CDQ group to invest a maximum of \$500,000, annually, in non-fisheries related projects. **Because each of the six CDQ groups would be limited to a maximum of \$500,000, the aggregate annual amount spent on non-fisheries projects by the existing six CDQ groups would be capped at \$3 million.** This represents almost 7 percent of the total CDQ royalties derived from all species allocations in 2002, or about 4 percent of total revenues.

Given that each group will be capped at the same amount, the limit on non-fisheries related projects would not be tied to the previous year's pollock allocations. Thus, if each existing CDQ group spent the maximum amount allowable on non-fisheries related projects, it could represent from \$25,000 to \$500,000 per community. This is because the minimum number of communities represented by any one CDQ group is 1, and the maximum currently represented by any one CDQ group is 20.

While the current number of CDQ groups results in a \$3 million cap on non-fisheries related investments, there exists the possibility that additional groups could become eligible in the future. Should an eligible community or communities sever affiliation with their current group and create a new group, Option 2 would allow an additional maximum of \$500,000 to be spent on non-fisheries related projects for each new CDQ group. At the same time, there is also the potential for an existing CDQ group to dissolve. Should those eligible communities join with an existing group, effectively, the \$3 million aggregate cap would be lowered to reflect the reduced number of CDQ groups. While these scenarios are necessary to describe how Option 3 would be implemented, they are not likely to occur. The number of CDQ groups has remained stable since inception over ten years ago, and the groups have established long-term relationships with fishing partners, processing companies, and communities. Note, however, that while the number of CDQ groups has remained the same, there have been numerous changes in the groups themselves. For instance, the only group originally formed as a for-profit corporation subsequently modified its charter to non-profit status. Secondly, the membership of some of the groups' Board of Directors has changed, with the addition of nine new eligible communities since 1992.¹¹ Finally, as the program evolved from one species (pollock) to the multi-species CDQ Program, the size, sophistication, staffing, investment portfolios, and expertise of the groups have changed.

¹¹In 1996, NMFS published a final rule adding Akutan as an eligible community, based on the Council's recommendation that the community did not have previously developed harvesting or processing capability sufficient to support substantial BSAI groundfish fisheries participation. In 1999, NMFS made an administrative determination that an additional eight communities were eligible for the CDQ Program, based on a recommendation and supporting documentation from the State. Thus, the total number of eligible communities has evolved from 56 to 65 since 1992, affecting the membership of four CDQ groups.

Option 4

Option 4 would allow the CDQ groups to invest up to 50 percent of total revenues in non-fisheries related projects. Annual combined revenues for the CDQ groups, in 2002, was reported at about \$70 million. **Using 2002, as an example, the CDQ groups would collectively be allowed to invest up to \$35 million in non-fisheries related projects.** This is considerably less restrictive than Options 1-3. Using 2002 data, Option 4 would allow approximately \$33 million, \$27 million, and \$32 million more to be invested in non-fisheries related projects than is proposed under Options 1, 2, and 3, respectively.

The amount that each CDQ group would be allowed to invest in non-fisheries related projects would vary substantially. CDQ group revenues (from the combined statements of activities reported in Section 2) have varied from \$54 million to \$76 million in the most recent four years for which audited data are available. Each group's revenues vary as well. For instance, using the 2002 revenues, the amount each group would be allowed to spend on non-fisheries related projects under this option ranges from about \$3.4 to \$8.1 million, a difference of approximately \$4.7 million. In addition, the amount each group would be able to spend on non-fisheries related projects per community ranges from about \$170,000 to \$3.8 million. Thus, the greatest *difference* in the amount each group would be allowed to spend on non-fisheries related projects per community under this option is about \$3.6 million. Again, the impact of this option will vary annually depending on the annual changes in the TAC and the financial performance of each CDQ group (i.e., those groups that demonstrate the greatest operational efficiency and investment success will thus be able to invest more in non-fisheries related projects).

Option 5

Option 5 would allow each CDQ group to invest up to \$1 million, annually, in non-fisheries related projects. **Thus, the aggregate amount spent on non-fisheries projects by the existing six CDQ groups would be capped at \$6 million.** This represents almost 2.2 percent of the total CDQ royalties derived from all species allocations in 2002, or about 1.4 percent of total revenues. While the current number of CDQ groups results in a \$6 million cap on non-fisheries investments, there exists the possibility that additional groups could become eligible in the future, or a group could dissolve. Option 5 would allow (but not necessarily assure) an additional maximum of \$1,000,000 to be spent on non-fisheries related projects for each new CDQ group.

Unlike the previous options, Option 5 would allow each group to spend the same amount on non-fisheries related projects annually, regardless of their total royalties or revenues for the year (assuming those royalties and revenues exceeded \$1 million). Using 2002 as an example, a cap of \$1 million represents about 6 percent - 15 percent of an individual group's total revenues.

Comparison of Options 1 - 5

The difference between Options 1 - 5 is the annual limit on the CDQ groups to invest in non-fisheries related projects. Table 4.1 summarizes the estimates of annual expenditures that could be made on non-fisheries related projects collectively by the six existing CDQ groups under the options:

Option 1 - \$2 million;
Option 2 - \$8 million;
Option 3 - \$3 million;
Option 4 - \$35 million;
Option 5 - \$6 million.

These results are based on the 2002 pollock royalties (for Options 1 and 2) and 2002 total revenues (for Option 4) of the CDQ groups.

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Table 4.1: Estimated maximum allowable investment in non-fisheries related projects¹ under Alternative 3, Options 1 - 5

OPTION	Option 1	Option 2	Option 3	Option 4	Option 5
	5% of annual pollock royalties	20% of annual pollock royalties	\$500,000 annually	50% of annual revenues	\$1 million annually
Estimated maximum (all groups combined) ²	\$2 million	\$8 million	\$3 million	\$35 million	\$6 million
Estimated maximum shown as a percentage of total 2002 CDQ royalties	4.3%	17.2%	6.5%	76.0%	2.2%
Estimated range of maximum expenditures per group ³	\$100,000 - \$478,000	\$398,000 - \$1.9 m	\$500,000 per group	\$3.4 m - \$8.1 m	\$1 m per group

¹This does not include currently allowable non-fisheries related investments such as scholarships, training, financial instruments, and charitable contributions.

²Estimates are based on the actual 2002 CDQ pollock royalties and revenues.

³For Options 1 and 2, estimates are based on 2004 pollock allocations and the 2002 average pollock royalty rate. The estimate for Option 4 is based on 2002 revenues, which means royalties received for all CDQ species plus investment, program, interest, and all other annual income.

In addition, Table 4.1 provides a range of the estimated maximum expenditures per CDQ group based on 2002 data. The greatest estimated difference in the amount *each* group would be allowed to spend on non-fisheries related projects varies under the options: Option 1 - \$378,000; Option 2 - \$1.5 million; Option 3 - \$0; Option 4 - \$4.7 million; and Option 5 - \$0. The annual limit for each CDQ group would vary depending on the pollock royalties received in the previous year for Options 1 and 2, and on the total revenues received in the previous year for Option 4. For instance, pollock royalties received in 2003 would be used to determine the limit on non-fisheries related projects in year 2004, under Options 1 and 2. Option 3 would limit each group to a \$500,000 cap. Total revenues received in 2003 would be used to determine the limit on non-fisheries related projects in year 2004, under Option 4. Option 5 would set the cap at \$1 million, annually.

Alternative 3 would result in allowing a *portion* of the CDQ groups' total investments to be in non-fisheries related projects. The annual limit would be explicit in Federal regulation, with the clarification that certain categories of non-fisheries related expenditures are not covered under this limit. The non-fisheries related investments not covered under this limit would relate to the current activities of the CDQ groups described under Alternative 1, that are non-fisheries related but generally accepted by Federal and State managers. These include investments in the following:

- individual scholarships,
- vocational training,
- administrative expenses,
- charitable contributions, and
- financial instruments such as stocks and bonds.

The result is that all fisheries related projects and investments would continue to be allowed, with some limited amount that could be spent on non-fisheries related projects as well. In addition, activities that are currently undertaken by the CDQ groups, as identified above, would continue to be allowed and not applied to the non-fisheries related limit. To clarify, the regulations that would implement the intent of Alternative 3 would likely:

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- define fisheries related projects,
- identify the limit on non-fisheries related projects, and
- identify any non-fisheries project categories that do not apply to the limit or are subject to a different limit.

The list of allowable investments that are not proposed to be applied to the non-fisheries related limit reflects the type of investments that the CDQ groups are currently undertaking, whether they are fisheries or non-fisheries related. The majority of the CDQ groups' investments to date have been in fisheries-related economic development projects, with a relatively small amount spent on administrative expenses, scholarships, training, and charitable donations. The category of charitable donations encompasses a fairly broad scope; it could represent a donation to a non-profit organization that is not fisheries-related, support of a local event, or a donation to fund travel costs for a local dance team. In addition, the CDQ groups typically invest a portion of their revenues in financial instruments, such as stocks and bonds. These investments have been deemed generally acceptable by the CDQ Team and within the bounds of the program's intent, thus these types of investments would not apply to the annual limit proposed on non-fisheries related investments under Alternative 3.

These types of investments have had no annual limit in the past, but have been considered in the context of a CDQ group's CDP in the allocation process, as the allocation process provides the primary mechanism by which government managers can oversee the groups' investment activities. One example is the CDQ groups' administrative expenses. While administration is necessarily related to the CDQ groups' fishing activities, the CDQ Team has encouraged the groups to minimize administrative expenses in order to pass more of the CDQ benefits on to the communities. In the past, if it appeared that a group was accruing excessive administrative expenses, the CDQ Team requested that the group seek ways to reduce its administrative overhead. Thus, while there is not a limit on administrative expenses established in regulation, inquiries and requests by the CDQ Team during the allocation process are fairly effective in meeting the policy goals.

Under Alternative 3, non-fisheries related projects would be identified in regulation as a category of allowable investments that would be limited annually. This captures the intent of Alternative 3, Options 1- 5, and only limits the amount of money that a CDQ group could spend on non-fisheries related projects each year. It does not limit the type of non-fisheries related projects to economic development projects in the region represented by the CDQ group. This would essentially provide the CDQ groups complete control over a portion of their investments, and limit the role of the State to ensuring that the CDQ groups stay within their annual limit in this regard. Should further restrictions be added on the type of non-fisheries related projects in which the CDQ groups may invest, (Suboptions 1and 2), this would also be made explicit in Federal regulations.

The benefits of allowing some portion of the CDQ investments to be in non-fisheries related projects have also been discussed under Alternatives 1 and 2. The primary benefits to the CDQ groups include: 1) a clear understanding of allowable investments defined and clarified in Federal regulation; 2) the ability to tie the list of allowable projects to the criteria used to evaluate the CDPs; 3) the flexibility to meet other important investment needs in the CDQ communities that are not fisheries-related, but would promote community development; 4) the ability to invest more equitably in local projects among the eligible CDQ communities, considering that there may be limited opportunities for fisheries-related projects in some communities; 5) mitigating the risk that a group will be punished in the allocation process for poor financial performance due to a lack of viable fisheries-related investments in the region; and 6) the opportunity to maximize economic returns on invested assets by selecting among the "best" investment opportunities, without regard to whether they are strictly fisheries-related.

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The CDQ groups have voiced concern regarding their future success in the CDQ Program without the flexibility to invest in non-fisheries related economic development projects. While several groups have expressed support for the original intent of the program to enable communities to participate in the fishing industry and create self-sustaining fisheries economies, the majority of the groups agree that the nature of the investments and the sophistication of the CDQ groups have changed since the program's inception. In addition, some groups with communities that are further inland, such as CVRF and YDFDA, may have very limited opportunities for fisheries-related projects in those communities. Some groups have also expressed concern that some communities have investment needs that are not fisheries-related but are just as crucial to the overall health and development of the community. These are typically infrastructure projects or investments in viable businesses within the community that would contribute to employment and economic stability. Given that the overall goal of the CDQ program is community development, there may be sufficient justification to expand the types of allowable investments to non-fisheries related projects.

While the CDQ groups may benefit from eliminating the restriction on fisheries-related projects, there exists the potential under Options 1 - 5 for the CDQ communities to receive fewer benefits than they are currently realizing, at least in the short-term, as the CDQ groups expand their investments to projects outside the region. The benefits of Alternative 3 are based on the concept that allowing the CDQ groups to expand their investment opportunities beyond fisheries-related projects would provide for additional benefits to the eligible communities. Thus, ensuring this outcome is a fairly important consideration. The allocation process as it is currently structured provides a mechanism by which government managers could help to ensure that the benefits of the non-fisheries related projects would be realized by the eligible communities. It would likely require more effort by the CDQ groups in the development of their CDPs, as the community benefits derived from non-fisheries related projects may not be as evident as economic development projects within the region. If a CDQ group did not show how the projects were benefitting the communities within its region, that may be reflected in a lower allocation. Note that the ability to ensure that the groups are meeting the milestones identified in their CDPs and continuing to benefit their member communities through non-fisheries related projects is dependent on a periodic allocation cycle. A periodic allocation cycle strengthens the oversight mechanism and substantially increases government control over the program.

A related potential negative effect of Alternative 3 mirrors the concern expressed during the development of the CDQ Program. The program was developed to provide fishermen who reside in western Alaska communities an opportunity to participate in the BSAI fisheries, with the intent that increased participation in the fishing industry would help diversify local economies and provide long-term employment to residents of eligible communities. The CDQ Program was created by allocating a distinct portion of the groundfish BSAI TACs, and eventually the crab and halibut TACs, to the CDQ groups. The result is that the commercial TACs were adjusted downward to account for the CDQ reserves. As an annual allocation of a public resources, the program was created with substantial government oversight. The Council, State, and commercial fishing industry's perception of the program at the time hinged on the concept that the benefits of the program would be realized within the communities of interest for developing fisheries economies. Allowing non-fisheries projects may create a perception within the public that the program is straying too far from that goal. However, the program has since been established as part of the Magnuson-Stevens Act and, while the original concept is a necessary consideration for the Council, given the potential benefits and continued growth of the program, modifications may be warranted to allow some level of non-fisheries related investments.

Depending on the desirability of increasing non-fisheries related investments, the options that provide for a limit on non-fisheries investments expressed as a fixed dollar amount (Option 3: \$500,000 and Option 5: \$1

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million) could represent an incentive for some communities to sever from their current CDQ group and establish an independent group with its own annual investment allowance. The likelihood of this depends on several factors, including the nature and rate of return expected on the suite of available investment options. It is also dependent on the size of the allocation that a new group would expect to receive in the allocation process. However, the possible incentive to destabilize the existing CDQ groups may be one outcome of relaxing these investment limits and providing for a fixed dollar cap on a “per group” basis.

Finally, allowing non-fisheries related investments by the CDQ groups may increase the political pressure on the groups to fund a variety of general infrastructure and development projects that have generally been the responsibility of the government. The CDQ Program was not intended as a substitute for governmental responsibilities, such as healthcare, school systems, etc., and the mandate to spend CDQ money on fisheries-related projects has provided a definitive line for the CDQ groups to employ when they receive proposals from their member communities. Allowing a portion of CDQ royalties to be spent on non-fisheries related projects would further blur the distinction between the CDQ program and a government program that provides for the general welfare of the community, and the CDQ groups would likely feel additional pressure to provide some of these basic services. In addition, it may provide justification for the State legislature to reduce spending on community infrastructure projects within the region. Establishing a limit on any non-fisheries related investments could help to mitigate this potential concern.

Should the Council prefer to allow investments in non-fisheries related projects, the task under Alternative 3 is to determine an adequate allowable limit, which would have a meaningful impact on the CDQ groups. Allowing a portion of the pollock royalties to be spent on non-fisheries related projects may provide the flexibility the groups need to respond to other development needs within their member communities. This could retain the original intent of the program by focusing the benefits of the CDQ allocations primarily on developing a sustainable fishing industry in western Alaska.

Summary of Alternative 3, Options 1 - 5

The maximum estimated non-fisheries investment by all CDQ groups combined under **Options 1 and 2**, based on 2002 **pollock** royalties, would be \$2 million, and \$8 million, respectively. These amounts represent approximately 4 percent and 17 percent of the total CDQ royalties derived from all species allocations in 2002, respectively. The limits proposed in Option 1 is fairly low when considered on an individual community level basis, and may not be sufficient to support a group that represents several communities. Option 2 would allow the groups to make significant initial investments in non-fisheries related projects, while still combating the perception that the program is a substitute for municipal assistance or other general economic development efforts in the region.

Option 3 would limit each group to spending \$500,000, annually, on non-fisheries related projects, essentially establishing a collective limit of \$3 million on all six CDQ groups. Recall that this would allow approximately 7 percent of the total CDQ royalties derived from all species allocations in 2002 to be spent on non-fisheries related projects. This overall limit is similar to that proposed in Option 1, but is more disparate among groups when considered on an individual community basis. Option 3 would constrain each group to spending no more than the specified maximum amount on non-fisheries related projects, regardless of whether the group represents one community (CBSFA) or twenty communities (CVRF). Given the current CDQ member communities and group structures, the range of maximum expenditures on non-fisheries projects is estimated at \$25,000 - \$500,000 per community represented. In Option 1, this range is reduced to \$24,000 - \$100,000 per community represented.

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Option 4 would allow up to half of the CDQ groups' revenues, generated from royalties from all of their allocated species and other annual income, to be invested in non-fisheries related projects. Recall that without either suboption, Option 4 would essentially allow the CDQ groups to invest in any projects outside of western Alaska, up to the proposed limit. Option 4 represents a substantially greater potential opportunity for investment in non-fisheries related projects than any of the other options. Using 2002 as an example, about half of the total CDQ revenues for all six groups combined equaled about \$35 million, slightly less than was received in aggregate pollock CDQ royalties.

Some groups contend that the limits proposed in Options 1 and 3 are too low. CVRF addressed this issue in its testimony at the June 2001 Council meeting and proposed allowing each CDQ group to spend up to \$1 million per year on non-fisheries related projects. This is represented by **Option 5**, which would essentially establish a collective annual limit of \$6 million on the six CDQ groups, under their current structure. Recall that this would allow approximately 2 percent of the total CDQ royalties derived from all species allocations in 2002 to be spent on non-fisheries related projects. This option was proposed based on the assertion that some groups with many member communities will be severely constrained on an individual community level by a lower allowable limit. The example provided by CVRF was that of a Nunivak Island reindeer business which would require \$500,000 or more to create a viable business and which supports the only community on the island, Mekoryuk. CVRF, with 20 member communities, contends that the \$500,000 annual limit (Option 3) is simply too low to have a meaningful effect on more than a few communities in the region.

The CDQ groups with more member communities will necessarily be more constrained by the limit on non-fisheries related investments than the groups with fewer communities. In addition, note that over time, a cap on non-fisheries related investments in terms of a fixed dollar amount (e.g., the \$500,000 and \$1 million caps proposed in Option 3 and Option 5, respectively) will become smaller in "real" terms as inflation erodes the buying power of a dollar. Thus, without an explicit provision to account for the effects of inflation, the effective amount each CDQ group may invest in non-fisheries related projects, annually, will decline over time under Option 3.

Should the Council prefer to allow some non-fisheries related projects under Alternative 3, it may want to consider whether it is also appropriate to revise the goal and purpose statement for the CDQ Program. As currently expressed in Federal regulation, the overall goal of the program is to create self-sufficient fisheries-based economies. If this remains the primary goal of the program with a new allowance for limited investments in non-fisheries related projects, the goal and purpose statement may still be interpreted as consistent with that action. However, although there is no assurance that any group would exercise this option to its fullest extent, allowing half of total revenues to be spent on non-fisheries related projects outside of western Alaska (Option 4) would mark a fundamental shift away from the original intent of the program. While this shift may be appropriate at this point in the program's history, the Council may want to revisit and clarify the overall goals of the CDQ Program for consistency. This will be discussed in more detail under Suboptions A - C, which are associated with the goals and purpose of the CDQ Program.

4.4.2 Suboptions related to the type of non-fisheries investments allowed

There are two suboptions proposed that would restrict the type of non-fisheries related project that could be undertaken by a CDQ group. Suboptions 1 and 2 apply only to the non-fisheries related projects limited under Options 1 - 5. For instance, under Option 1, each group could invest up to 5 percent of their pollock royalties in non-fisheries related projects, annually. If one of the suboptions is selected, it would further restrict the location and type of non-fisheries related projects allowed within that 5 percent annual limit. It does not affect

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the fisheries-related projects undertaken by the CDQ groups or the non-fisheries related investments that are currently acceptable without an annual limit, such as scholarships or charitable donations.

Suboption 1 (preferred alternative)

Suboption 1 would require that any non-fisheries related investments be made in economic development projects in the region of Alaska represented by the CDQ group and be self-sustaining. Options 1 - 5 limit the amount of annual investment in non-fisheries related projects, but do not restrict the nature or location of such projects. First, Suboption 1, as applied to Options 1 - 5, would ensure that the investments were made in economic development projects within the CDQ region. This has been interpreted to mean that a CDQ group could invest in economic development projects within the entire CDQ region, not just the group's member communities. Thus, "in-region" would extend to the borders of the 65 communities that currently participate in the CDQ Program. The CDQ region is effectively defined by the geographic eligibility requirement in Section 305(i)(1)(B) of the Magnuson-Stevens Act as follows: the region of Alaska located within 50 nautical miles from the baseline from which the breadth of the territorial sea as measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island in the Bering Sea. The CDQ region would not include the area along the coast of the Gulf of Alaska or the Chukchi Sea, even if these areas are within 50 nm of the baseline of the territorial sea as measured along the Bering Sea coast. Note that the current CDQ regulations do not require that fisheries-related projects undertaken by the CDQ groups be in the CDQ region or the groups' member communities.

Second, Suboption 1 would require that the non-fisheries related investments were made in self-sustaining economic development projects. To qualify as a "self-sustaining economic development project" under Suboption 1, staff assumes that the proposed investment must show a reasonable likelihood of a positive financial return that, at least, covers the operating expenses of the project over the long-term. This means that only economic development projects with an expectation of profit over time would be allowed. Any non-fisheries related investments would be expected to generate an income stream or appreciate over time and be self-sustaining; the group would not expect to have to subsidize the project in the long-term. This effectively means that the projects would have to be income generating investments. Thus, the CDQ group could not fund the construction of a facility that is then turned over to a separate organization to provide operating and maintenance funds.

While the intent of this suboption is that the investment would be consistent with the group's internal investment policies, it would be difficult to reference the groups' investment criteria in the regulations implementing this suboption, unless the current regulations provided more guidance on what the criteria should be. Currently, each group develops its own individual investment criteria and Federal regulations do not address this criteria. It is assumed, therefore, that the regulations would reflect the intent that the non-fisheries related investments meet the groups' investment criteria, but the CDQ Team would make the determination of whether an investment met the requirements of the regulations.

Economic development projects may also be expected to create jobs in the community, thus, this suboption allows for projects in communities that may provide valuable employment opportunities but may not provide a substantial financial return. In addition, this suboption would allow for investments in general infrastructure or community development projects, as suggested by the NRC, as long as the project was expected to generate a positive return in the future. For instance, a group may choose to build a firehall for a CDQ community using CDQ funds up to the limit allowed on non-fisheries related projects. This would be allowed under Suboption 1 if the group expected to lease the firehall to the community and receive a positive return or use some other such mechanism for generating revenue from the investment. By contrast, this suboption

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would preclude a group from building a road, school, or clinic, for example, in a community from which no financial return was expected.

This suboption would also preclude a group from giving unspecified grants to their member communities under the non-fisheries project category. Under Suboption 1, a CDQ group could fund a specific request by a community to conduct an economic development project in that community, but it could not grant unencumbered money to the community and allow the community to decide how to spend that money after it had received the grant from the CDQ group. This is discussed in more detail later in this section.

Suboption 2

Suboption 2 would require that any non-fisheries related investments be: (A) for education, vocational training, scholarships, or other human resource programs for residents of the CDQ communities; or (B) community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group. This suboption appears to limit the range of allowable non-fisheries related projects differently than Suboption 1, because it would require that any non-fisheries related investment be in education or training-based projects or associated with general infrastructure development.

Part (A) of Suboption 2 would affect funding of education, vocational training, scholarships, and human resource programs, and make these projects subject to the annual limit on non-fisheries related projects selected under Options 1 - 5. To date, the CDQ Program has generally allowed the CDQ groups to spend money on individual training and scholarship programs, regardless of whether the field of study is fisheries-related. Since the program's inception, the six CDQ groups combined have spent from \$0.5 million to \$1.6 million on scholarships and training annually. In 2002, the State reported that the CDQ groups awarded a total of \$1.6 million in scholarships for vocational training and post-secondary education to 1,135 people. This represents about 3.5 percent of the groups' total 2002 revenues. While some of the academic scholarships have supported fisheries related studies, this has not been a prerequisite to approval by the State and NMFS.

The CDQ Program, however, has disallowed education projects related to general infrastructure and operational support, unless the project is consistent with the intent of the program and has a direct fisheries link. NMFS has stated in previous letters disapproving specific infrastructure projects, that the primary purpose of a proposed building must be related to starting or supporting commercial fisheries business related activities, as stated in 50 CFR 679.1(e). The concern is that if the primary purpose of the building is not fisheries related, allowing that project to be funded with CDQ revenues could provide justification for using CDQ funds to support the construction of any public or private facility in a community. Even if the facility could be made available for use by someone involved in commercial or sport fishing, approval of this type of justification would make it extremely difficult to limit the types of construction projects that could be funded by the CDQ Program. This outcome would be contrary to the intent of the CDQ Program to provide funds to start or support commercial fisheries business activities.¹²

The CDQ Program has also not allowed the funding of educational equipment and operational support under the general category of education investments. In 2002, a CDQ group proposed a \$400,000 project which would supply computers to each of its member community's schools (technology infrastructure, hardware, software, and training). NMFS concurred with the State's recommendation to disapprove the amendment to

¹²Letter from Sally Bibb, CDQ Program Coordinator, NMFS, to Eugene Asicksik, Norton Sound Economic Development Corporation, August 14, 2003.

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the CDP, stating that the project was not consistent with the goals and purpose of the program, since it was only indirectly related to starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy. NMFS recognized that computer equipment improves the education of residents of the CDQ communities, and better-educated residents support the development of a fisheries-related economy. NMFS also recognized that the State and NMFS have approved CDPs that fund scholarships, training, and work readiness programs that are not directly related to fisheries. However, in this case, NMFS stated that the regulations authorizing the CDQ Program do not extend to expanding this limited allowance for non-fisheries projects to the purchase of equipment or infrastructure that is not directly related to fisheries. Approval of this type of CDQ project could provide justification for using CDQ funds for equipment or infrastructure investments in any sector of the economy that indirectly supports the education, health, or quality of life, because all of these services could be considered necessary to support employment in fisheries related businesses. Using the rationale of an indirect link to fisheries would make it almost impossible to limit the types of equipment purchases and infrastructure development projects that could be funded by CDQ assets.¹³

The projects described above were determined to be beyond the bounds of the program's intent, in that they did not have a direct fisheries link and were not consistent with the scope of the education project typically allowed by the program. The funding of education projects has been fairly limited to individual scholarships for post-secondary and vocational training, and has not constituted a substantial portion of the CDQ groups' expenditures to date.

Given how education and training projects have been addressed in the past, Suboption 2 appears to have two effects: 1) limit the amount of funding that can be invested in training, education, scholarships, and human resource programs, and 2) potentially expand the current understanding of allowable education projects (scholarships) to include any project related to an educational purpose. Suboption 2 would thus allow any educational project, whether scholarship or otherwise, and would limit that project to the specified amount selected for non-fisheries projects under Alternative 3, Options 1 - 5. It is unclear whether Suboption 2 would allow investments in infrastructure, equipment, or operational expenses of a building or program with educational purposes. Should this suboption be selected as a preferred alternative, further clarification of this issue would be necessary.

Currently, scholarships for post-secondary education or vocational training are categories of investment that are not subject to a specific annual limit. Alternative 2 and Alternative 3 (without this suboption), propose to make these categories of allowable investments explicit in Federal regulations with no annual limit, meaning the CDQ groups could choose how much to invest in education, training, and human resource programs annually, subject to review by the CDQ Team. Applying Suboption 2 to Alternative 3 would change this intent, since it would identify these types of investments as "non-fisheries related" and expressly apply the annual limit determined under Options 1 - 5.

Education and training programs continue to represent a key element of the CDQ Program, and most education, vocational training, scholarships, and some human resource programs are generally allowed under the rules governing the current program, regardless of whether they are directly fisheries related. However, as discussed previously, the CDQ Team has rejected some investments based on the fisheries related restriction. Alternative 2 and Alternative 3 (without the suboption) would seem to eliminate the need to make

¹³Letter from Susan J. Salveson, Asst. Regional Administrator, NMFS, to Eugene Asicksik, Norton Sound Economic Development Corporation, August 26, 2002.

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individual determinations of whether specific investments in training, scholarships, and all education projects, etc., are acceptable, by allowing all investments that fit this category.

In contrast, part (A) of Suboption 2 proposes to restrict any non-fisheries related investments (up to the annual limit) undertaken by the CDQ groups to education or training programs. Thus, it is assumed that the CDQ Team would need to make the determination of whether a specific education investment was fisheries-related or non-fisheries related in order to know whether to apply the limit. If the investment was deemed fisheries-related, it would not count against the annual limit on non-fisheries related projects. If the investment was deemed non-fisheries related, it would count against the annual limit. Thus, applying Suboption 2 to Alternative 3 would potentially limit the amount of investment in educational scholarships and training undertaken by the CDQ groups since any non-fisheries related education and training investments would be applied toward each group's annual limit on their total non-fisheries related investments. In addition, the suboption would not eliminate the individual determinations undertaken by the State, as it would continue to require the CDQ Team to evaluate each proposed education and training investment to determine whether it is fisheries-related and thus whether it is subject to the annual limit on non-fisheries related investments.

Part (B) of Suboption 2 would allow community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group, subject to the annual limit applied to non-fisheries related projects under Options 1 - 5. Staff assumes that infrastructure development refers to types of permanent installations such as buildings, roads, docks, water and sewer projects, or recreational facilities. Staff also assumes that infrastructure development does not refer to investments made in businesses with the expectation of generating revenues, unless it is directly associated with an investment in a facility or other permanent installation.

Some CDQ groups have expressed the desire to promote local development in a broad fashion, and at least two groups proposed to use royalties to establish businesses that are at best tangentially related to commercial fishing (NRC 1999b). As reported by the NRC, these programs have not been viewed favorably by the State, which has required businesses to have a tangible link to commercial fishing. Some examples of business development with a fisheries link conducted by the CDQ groups have been salmon and herring marketing development, creation of an Alaska seafood investment fund, and establishment of vessel haul-out and storage businesses. Some other businesses, such as a car rental business, have not been accepted by the CDQ Team for lack of a direct link to the fishing industry. Part B of Suboption 2 would limit the groups' non-fishing related investments to infrastructure projects and continue to require a tangible link to commercial fishing for all other economic development projects. Like Suboption 1, Suboption 2 would also preclude a group from administering unencumbered community grants.

Based on this interpretation, Suboption 2 appears to prevent a group from investing in a business or profit-bearing opportunity within a community if it is not an infrastructure project. This may create concern for some of the groups who have potential investment opportunities in non-fishing related for-profit businesses that could create revenues for the CDQ group (the CVRF reindeer farm, for example), but are not associated with infrastructure development. Thus, Suboption 2 may not mitigate the primary negative impact associated with the status quo. If some communities within the CDQ groups no longer have viable fishing-related opportunities in the future, the groups may need the flexibility to support businesses or projects that would further community economic development without being constrained by the current fishing-related restriction. Issue 7 was spurred, in part, by this concern, that in order to enable the groups to maximize benefits and provide viable employment and business opportunities to the communities in the region, they must be able to support some non-fisheries related endeavors within the CDQ communities. This notion is consistent with

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the NRC recommendation to allow some CDQ funds to be available for other activities that will enhance community infrastructure or land-based economic activity. Suboption 2 appears to prevent the CDQ groups from this type of investment unless it is directly associated with an infrastructure project.

A related concern associated with this suboption is that this will enable the CDQ groups to undertake non-fisheries related projects that are typically the responsibility of the government. While these may be part of the material need for community development, there is a concern that this will increase the reliance on the CDQ groups for public services that the government generally provides. While the NRC recommended that the restriction be removed for at least some portion of the CDQ revenues to allow for the CDQ groups to undertake general infrastructure projects that would contribute to overall community development, it also acknowledged that some of the subsistence and commercial economic activity of these communities is land-based, and that the CDQ groups should also be permitted to support these types of activities and businesses. Thus, a restriction on non-fisheries related projects that would limit the groups to only supporting general infrastructure projects and education or training programs may not be consistent with the NRC recommendation for expanding the program.

Note that objections to the use of royalty income from fishing operations to support ‘public infrastructure’ projects that are typically the responsibility of the government may disregard the source of the CDQ royalties, i.e., the public fishery resources that are transferred to CDQ group use and control. In addition, the assertion that royalties should not be used to fund public services, simply because the government should provide these services through other means, may result in prolonging substandard living conditions in rural villages, especially if government cannot afford (or has chosen not) to provide these basic services.

Community Grants

Another issue of importance relative to these two suboptions is that of community grants. More than one CDQ group has expressed interest in developing a program by which the groups could approve unencumbered grants to their member communities. CVRF proposed in its June 2001 testimony to the Council that CDQ groups should be able to institute community grant programs of up to \$200,000 per group per year. CVRF noted that it has received many requests from its communities for this type of support, and it maintains that the CDQ Program should allow for this minimal level of non-fisheries investment in western Alaska communities. **This type of investment would be allowed under Options 1 - 5 and be applied toward the limit on non-fisheries related investments.** Based on current pollock royalties, any of Options 1 - 5 would allow CVRF to make the \$200,000 grants it has proposed.

If either suboption is applied to Options 1 - 5, however, a community grants program would not be allowed. Suboption 1 specifically requires that the investment be in economic development projects, or in the case of Suboption 2, education and training or infrastructure projects. Under Suboption 1, a CDQ group could fund a specific request by a community to conduct an economic development project in that community, but it could not grant unencumbered money to the community and allow the community to subsequently decide how to spend that money. While neither suboption would wholly satisfy some of the groups’ needs as discussed above, Suboption 1 would mitigate the concern that the program would become a substitute for governmental responsibilities and other publicly funded projects. Suboption 2, however, would allow the CDQ groups to fund general infrastructure projects such as are typically attributed to government responsibilities.

It is important to note that regardless of the Council’s decision on this issue, CDQ groups that administer grants to communities would have to be able to guarantee the grants were used for the same non-profit

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purpose that the CDQ groups are held to by the IRS in order to maintain their non-profit status (KPMG 2002). KPMG reports that many non-profits are in the position to administer grants, and they typically develop verification procedures to ensure that the grants are used for a specific purpose. Thus, if a CDQ group chose to distribute grants to individual communities and did not track what the funds were used for, they could possibly endanger their non-profit status. Under any of the options, the community receiving the grant would need to state what the money would be used for *before* the CDQ group awarded the grant, and this purpose would need to be consistent with the overall purpose of the CDQ group, as reported to the IRS (i.e., to promote community and economic development). The CDQ group would then need to verify that the funds were, in fact, used for their stated purpose. In sum, although the alternatives considered may not explicitly address the use of CDQ funds for this purpose, CDQ groups are not able to award wholly “unencumbered” grants without potentially jeopardizing their non-profit status.

4.4.3 Suboptions related to the goals and purpose of the CDQ Program

Should the CDQ Program be broadened to allow some level of investment in non-fisheries related projects under Alternative 3, there are three suboptions proposed to amend the current goal and purpose of the CDQ Program in Federal regulation and the BSAI FMP so that it is consistent with the preferred alternative. The purpose statement provides general guidance for the CDQ Program, and as such is expected to be a broad statement expressing the overall intent of the program. **However, the specific restrictions in Federal regulation governing fisheries and non-fisheries related investments will be based on the Council’s selection of a specific option and/or suboption under Alternative 3 for limitations on non-fisheries related investments.** In the past, lacking explicit regulations defining allowable investments and limits on those investments, NMFS has used the purpose of the program to express the Council’s original intent to limit the program to fisheries-related activities. Upon selection of a preferred alternative, however, the statement of the goal and purpose of the program will no longer be used as the sole source of guidance on fisheries-related investments.

The current goal and purpose (as stated in 50 CFR 679.1(e)) reads:

The goals and purpose of the CDQ Program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries-related economy.

Suboption A

Suboption A would amend the goal and purpose statement to read as follows (additions are underlined):

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible western Alaska communities primarily to provide the means for investing in, participating in, starting, or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries economy, and secondarily to strengthen the non-fisheries related economy in the region.

Suboption A broadens the current purpose of the program to provide for some level of non-fisheries related investments in the CDQ region. A purpose statement is considered general guidance, and this statement appears to be consistent with the intent of Alternative 3, Options 1 - 5. The proposed statement under Suboption A is very specific as to the purpose of the program, however, explicitly stating that strengthening the non-fisheries related economy in the CDQ region is a secondary purpose. This statement is more specific than the current statement in regulation, or that proposed under Suboption B.

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Note also that this statement differs from the current goal and purpose statement in that it specifies that the goal and purpose of the program is to allocate CDQ to *qualified applicants* (i.e., the CDQ groups) as opposed to the eligible CDQ communities. This difference does not change the operation of the program, however, as Federal regulations currently state that CDQ allocations are to be made to the CDQ groups (50 CFR 679.30(a)), which are referred to in regulation as “qualified applicants” defined under 50 CFR 679.2. The CDQ groups were created under Federal regulations as an effective way to organize individual communities on a regional basis in order to receive the benefits from the quota. A “qualified applicant” is defined as a local fishermen’s or economic development organization that represents an eligible community or communities, is incorporated under State or Federal law, and has a board of directors composed of at least 75 percent resident fishermen of the community or group of communities (50 CFR 679.2). Under this definition, qualified applicants (CDQ groups) are required to represent an eligible community or group of eligible communities. Thus, staff assumes that regardless of whether the goal and purpose statement expresses an intent to allocate CDQ to qualified applicants (CDQ groups) or eligible communities, both are consistent with the current Federal regulations governing the allocation process. The individual communities remain the core of the CDQ Program, but the groups are the designated applicants that represent an eligible community or group of communities.

Suboption B

Suboption B would amend the current goal and purpose statement to read as follows (additions to existing regulations are underlined and deletions are stricken):

The goals and purpose of the CDQ Program are to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, ~~fisheries-related~~ diversified economy.

Suboption B broadens the current purpose of the program to provide for strengthening a diversified economy in the CDQ region, as opposed to expressly restricting investment to a fisheries-related economy. This is a very broad statement, and also appears to be consistent with the intent of Options 1 - 5. Therefore, the Council could select either of the statements proposed in Suboptions A or B for inclusion in the BSAI FMP and remain consistent with any option selected under Alternative 3, Options 1 - 5.

Suboption C (preferred alternative)

Suboption C would amend the current goal and purpose statement in Federal regulation to read as follows (additions to existing regulations are underlined and deletions are stricken):

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries economy and, as a secondary priority, to strengthen the non-fisheries related economy in the region.

Suboption C is very similar to the intent of Suboption A, and may provide no effective substantive difference. Suboption C broadens the current purpose of the program to provide for some level of non-fisheries related investments in the CDQ region, and appears to be consistent with the intent of Alternative 3, Options 1 - 5.

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The proposed statement under Suboption C is also explicit in stating that the first priority of the program will continue to be supporting the fisheries related economy in the CDQ region, with a secondary priority to strengthen the non-fisheries related economy. Like Suboption A, this statement is more specific than the current statement in regulation or that proposed under Suboption B. In addition, this statement also specifies that the goal and purpose of the program is to allocate CDQ to *qualified applicants* (i.e., the CDQ groups) as opposed to the eligible CDQ communities. As mentioned previously under Suboption A, the change in wording would not change the operation of the program as authorized under 50 CFR 679.2.

4.4.4 Implementation Issues - Evaluation Criteria

Should Alternative 3 be approved, the criteria that the State and NMFS use to evaluate the merit of the CDPs would need to be modified to account for the change in allowable investments. Consistent with the goals and purpose stated in Federal regulations, the current evaluation criteria focus on developing fisheries-related economies and are not appropriate for evaluating non-fisheries related projects. Thus, selection of Alternative 3 may necessitate revising the evaluation criteria so that it could be aptly applied to both fisheries and non-fisheries related investments, particularly if the option selected allows the CDQ group to spend the majority of its income on non-fisheries related projects. This provokes the question of whether non-fisheries related and fisheries-related projects should be weighted equally in the evaluation process. Similarly, Suboptions 1 and 2 raise the question of whether projects undertaken within the region should be evaluated on the same basis as those conducted outside of the region.

The issue of weighting in the allocation process may be of great importance to the CDQ groups. One concern is that groups who continue to develop the infrastructure necessary to develop a sustainable fisheries economy will be evaluated on the same basis as those whose primary efforts are investing in non-fisheries related businesses outside of western Alaska. CBSFA, for instance, is in the process of completing a small boat harbor. Their concern is that the merits of their proposed project would be weighed equally with those groups who are using CDQ royalties for non-fisheries related projects, creating more competition for the primary allocations. It is already difficult to adequately assess the impact of improved education, job training, and fisheries infrastructure projects on a community's health and productivity. The current evaluation criteria appear to stress observable impacts which occur in the financial and narrative reports submitted by the CDQ groups.

The NRC report notes that if success is defined only in traditional market terms, some of the communities' definitions of success may not be fully recognized. If the revised evaluation criteria maintains the emphasis on traditional financial gains, it is very likely that non-fisheries related projects outside of the community will present better financial investment opportunities and therefore be assessed higher in a group's CDP, while projects that are less financially profitable, but which may be directly connected to fisheries development within the communities, would be perceived as having less merit. Thus, those groups that are struggling to continue improving their participation in the fisheries and creating a fisheries-based economy may be at a relative disadvantage in the allocation process. Weighing these two goals—good financial performance and creating employment, training, and other opportunities within the communities—has been difficult under the current program and is not unique to the issue of allowing non-fisheries related investments. However, the Council should consider that allowing non-fisheries related investments may intensify this conflict.

If one contends that all CDQ projects will ultimately benefit the CDQ communities, regardless of the nature and location of the project, and that the means of achieving the goals of the CDQ program should be broadened beyond “fisheries development,” there may not be sufficient justification to weight the two types of projects differently. However, if the CDQ Program retains its focus on fisheries development and is simply

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modified to allow for other types of community development projects, there is an argument for weighting fisheries-related projects more heavily in the allocation process. The NRC recommended that over time the program should be broadened, “perhaps still requiring most benefits to be reinvested in fishing and fisheries-related activities, but allowing some portion to go to other community development activities” (NRC, p. 2). In this sense, the Council may determine that fisheries-related projects may still take priority over non-fisheries related projects. If so, such a priority should be explicit in the evaluation criteria used in the allocation process.

4.5 Alternative 4 - No restrictions on CDQ investments

Alternative 4 would change the current Federal regulations so that there are no restrictions on the type of project in which the CDQ groups may invest. As stated previously, this alternative appears to represent the intent of H.R. 553, which was proposed in Congress in February 2001.¹⁴ The alternative thus represents one bound of the range of alternatives, in that it provides the least restrictive alternative in terms of allowable investments by the CDQ groups. A suboption related to the goals and purpose of the CDQ Program is also proposed under Alternative 4.

Alternative 4 would essentially give each CDQ group complete freedom in determining its investment mix. CDQ investments would not be required to be fisheries-related, nor economic development projects in the region of Alaska represented by the CDQ group. Alternative 4 means that the CDQ groups could spend all of their income, whether it is royalties generated from leasing quota or other investment income, on non-fisheries related projects. For reference purposes, recall that in 2002, the CDQ groups reported total revenues of over \$70 million, approximately 65 percent of which were royalty payments.

As discussed previously, one interpretation of the intent of H.R. 553 is that it would expand the allowable investments by the CDQ groups to non-fisheries related projects that would promote diversified local economic development (H.R. 553, p. 3, §305(j)(1)(B)). H.R. 553 contains no reference to “fisheries-related” investments and may imply that a broader range of investments is allowed. If one assumes this interpretation, Alternative 4 represents a similar intent to that proposed in H.R. 553. No restrictions would be made in Federal regulations on the type of allowable investment by the CDQ group, nor where such investments may take place, and no limits would be placed on the amount of that investment. If the goal of the program was broadened to providing sustainable, long-term, diversified local economic development, the government would need to ensure that the allocations were being used to meet that goal, but the type of investment necessary to achieve that goal would be at the discretion of the CDQ groups.

The general impacts associated with allowing non-fisheries related investments have been discussed under Alternative 3; the difference is that Alternative 4 proposes no limit on allowable investments. In sum, there are several reasons for allowing some portion of the CDQ groups’ income to be spent on non-fisheries related projects. The CDQ groups have evolved to the point where allowing some non-fisheries related projects may be a necessary means to achieving overall community development. Some of the CDQ groups contend they need this flexibility in order to meet the goal of creating self-sustaining economies, as fewer viable fisheries-related investments become available. There is an argument that as good fisheries-related business opportunities become increasingly limited in some communities, the CDQ groups will be punished in the allocation process for poor financial performance or not providing tangible benefits to all member

¹⁴H.R. 553 did not pass the House Subcommittee on Fisheries Conservation, Wildlife and Oceans. No action was taken on the bill in the 107th Congress, and staff is unaware of the introduction of a bill with a similar scope in the 108th Congress.

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communities. In addition, some groups contend that there are communities that would be better served by investments that promote general economic development, such as water and sewer projects, roads, and other community needs, and that a portion of the CDQ groups' income should be allowed to fulfill these needs.

Eliminating the fisheries-related requirement would indicate a distinct transition from the program's stated purpose: "to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy"(50 CFR 679.1(e)). However, if the overall purpose of the CDQ Program is broadened to promote general community and economic development in western Alaska through the CDQ allocations, allowing non-fisheries related investments would be consistent with this goal and allow the CDQ groups to meet this goal more effectively.

Alternative 4 does not limit the amount of non-fisheries related investments, nor does it require that the investment be in economic development projects in the CDQ region. As stated previously, certainly a viable non-fisheries related project outside of the region may potentially provide greater benefits to the CDQ communities than a less successful fisheries-related project inside the region. However, requiring that non-fisheries related investments be economic development projects within the region appears to be more consistent with the original intent of the program and the mandate that the allocations be used to strengthen and diversify local economies within the region. Note, however, that while the original intent is that the allocations be used to strengthen local economies within the region, there is no current requirement that the CDQ group's fisheries-related projects be in the region of Alaska represented by the CDQ group.

While communities could potentially benefit from any type of profitable investment by the CDQ group, the absence of a direct link between the CDQ projects and the communities will decrease the level of government control and may make it more difficult to assess the impact of the CDQ allocations on the communities the program was developed to serve, necessitating increased scrutiny of the CDPs. As discussed under Alternative 3, the evaluation criteria would need to be revised to accommodate evaluation of non-fisheries related projects. It would continue to be the responsibility of each CDQ group to show how the investments of the group are benefitting the member communities, regardless of the type and location of the project.

Relatedly, the Council may want to consider what level of government oversight would be appropriate under Alternative 4. In the past, the government has reviewed and evaluated the projects in the CDPs based on past performance, the likelihood of success, and whether the CDQ group exercised due diligence in making an investment decision. One of the primary roles of the government has been to advise the CDQ groups and help assess the risks they may be taking in a particular fisheries investment. There have already been some concerns regarding the time and staff resources necessary for the government to adequately assess whether a CDQ group has exercised due diligence in making an investment decision. The proposed action to allow unlimited non-fisheries related investments may appear to warrant considerable government oversight, in order to prevent mismanagement of a public resource and ensure that the benefits of the allocations continue to be realized in western Alaska communities. However, allowing non-fisheries related investments may make it even more difficult for government managers in this oversight capacity, as the State and NMFS may not have the expertise necessary to adequately evaluate a broad range of non-fisheries related projects. Assuming the State and NMFS do not have the appropriate staff and funding necessary to properly evaluate the merit of all non-fisheries related investments, the Council may wish to consider a reduced government role under Alternative 4.

4.5.1 Suboption related to goal and purpose of the CDQ Program

Should the Council prefer to broaden the CDQ Program to allow unlimited investment in non-fisheries related projects under Alternative 4, there is one suboption proposed to amend the current goal and purpose statement in Federal regulation so that it is consistent with this alternative. This statement mirrors the language that was proposed under H.R. 553 to identify the purpose of the program and would be added to the BSAI FMP and also promulgated in NMFS regulations:

The goals and purpose of the CDQ Program are: (A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development.

This suboption broadens the current purpose of the program to provide for achieving a diversified local economy in the CDQ region, as opposed to expressly providing for a fisheries-related economy. This is a very broad statement, and appears to be consistent with the intent of Alternative 4.

4.6 Summary

Relaxing the fisheries-related requirement would indicate a shift away from the original intent of the program, which was to strengthen the fisheries economies in the CDQ communities by providing opportunities to participate in the capital-intensive commercial fisheries of the BSAI. While the proposed action under Alternatives 3 and 4 may differ from the purpose of the program as identified by the Council in 1992, the program and the CDQ groups have evolved to the point where allowing some non-fisheries related projects may be a more practical means to achieving the overall goal of community development. The NRC recommended that while the program may continue to focus on fisheries-based development, it should be expanded to provide for investments in community infrastructure and other (non-fisheries) economic development projects. The NRC concluded and recommended the following (1999b, p. 76):

Finally, the economic and cultural development of these communities may at times be advanced through non-fishery employment or investments. Hence, we found no strong reason to require the communities to use funds generated from their CDQs to invest only in fisheries....

...We recommend that the restriction that CDQ revenues be invested only in fishery-related activities should be removed, at least for some portion of the revenues. Many of the communities will find that fishery investments are still the ones they wish to undertake. However, since community development is broader than fishery development, funds should also be available for other activities that will enhance community infrastructure or land-based economic activity. This broadening of the allowed investments would also remove uncertainty about whether particular investments are indeed "fishery related" and thus allowable under current rules.

Alternative 3 would substantially increase the CDQ groups' control over the types of allowable investments and would not require the groups to invest in economic development projects within the region. The difference between the options under Alternative 3 is in the absolute size of the non-fishery related investment that the CDQ groups may undertake in any given year. Alternative 4 would allow the CDQ groups total control over their investments. While there is the possibility that this added flexibility would increase the benefits to the CDQ communities, there is also the suggestion that, at least in the short-term, communities may receive fewer tangible benefits. The impact of these options is dependent on the individual business decisions of each CDQ group.

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Note that the ability to maintain sufficient government oversight of the groups' actions to ensure that any non-fisheries related investments benefit the CDQ communities is dependent on several issues related to the role of government oversight and maintaining a periodic allocation cycle. The current program provides for extensive government oversight, in both the information requirements and the requirement that CDQ projects are subject to prior approval by the government. The primary mechanism to ensure the requirements of the program are being met has been the allocation process, which has typically operated on a two to three year allocation cycle. Changes to these elements of the program are anticipated to be addressed in a subsequent analysis and will directly influence the potential impacts of allowing a specified level of non-fisheries related projects. Any analysis of potential changes to these fundamental elements of the CDQ Program would include an analysis of the impacts on non-fisheries related projects and the ability of the government to ensure that benefits continue to accrue to the CDQ communities.

If some level of non-fisheries related investment should be allowed under Alternative 3, the second issue is whether to require that non-fisheries related projects be in self-sustaining economic development projects in the region represented by the CDQ group (Suboption 1); or education, vocational training, scholarships, human resource programs or infrastructure development in the region represented by the CDQ group (Suboption 2). Certainly, a viable non-fisheries related project outside of the region may ultimately provide greater benefits to the CDQ communities than a less successful project inside the region. In that context, the location of a project is less important to meeting the overall goal of community development than ensuring that the revenue generated by the project can be directly tied to benefits realized in the communities. However, requiring that non-fisheries related investments be self-sustaining economic development projects within the region may be more consistent with the original intent of the program and the mandate that the allocations be used to strengthen and diversify local economies within the region. While some may contend that this requirement is unnecessary, it maintains a level of government control that has been relatively significant in the development of the program to date.

Suboption 2, however, would prevent the CDQ groups from investing in a business or profit-bearing opportunity within a community if it is not an infrastructure project. This may create concern for some of the groups who have potential investment opportunities in non-fishing related businesses that could create revenues for the CDQ group, but are not associated with infrastructure projects.

Overall, the need to broaden the allowable investments by CDQ groups to non-fisheries related businesses and projects was spurred, in part, by the limited number of viable fisheries-related opportunities in some of the eligible communities and the desire to support local business opportunities that appear to be profitable investments. The limited amount of fisheries related businesses to invest in within the region may force the CDQ groups to make unfavorable investments in order to stay within the narrowly interpreted fisheries mandate. It may also cause the CDQ groups to pay a higher price when investing in a company or vessel than they would otherwise, if the CDQ groups are competing for opportunities in a limited pool of fisheries related investments. The result is that the CDQ groups could potentially create an inflated market by bidding against one another; paying a higher price for an investment that would not otherwise have been valued as highly, absent the intensely competitive scenario.

If the Council prefers to allow some level of non-fisheries related investments under Alternative 3 or 4, the evaluation criteria used to determine the allocations may need to be revised to account for investments in non-fisheries related projects. If the CDQ groups are allowed to spend a majority of their revenues on non-fisheries related projects, the Council may need to determine and clarify in regulation:

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- evaluation criteria that would apply to fisheries and non-fisheries related projects
- whether to equally weight fisheries and non-fisheries related projects in the allocation process
- whether to equally weight projects conducted inside and outside the region of Alaska the CDQ group represents

Similarly, the Council may choose to amend the current goal and purpose statement of the CDQ Program depending on the preferred alternative. However, while it is important to keep the goal and purpose statement consistent with the alternative selected relating to non-fisheries investments, the statement of the goal and purpose will not be the sole source of guidance on fisheries-related investments. The restrictions governing fisheries and non-fisheries related investments will be based on the specific option or sub-options selected under this issue.

If Alternative 4 was selected, in which the groups, at their discretion, could invest any portion of their revenues in either non-fisheries or fisheries-related projects, the Council may wish to consider a reduced government role. One of the primary roles of the government has been to advise the CDQ groups and help assess the risks they may be taking in a particular fisheries investment, as well as make a determination about whether the project fits the fisheries-related requirement. Allowing groups to invest in any type of project under Alternative 4 may lessen the need for the current level of government oversight in that respect.

Finally, government costs for administering the program are not expected to change significantly under any of the proposed alternatives. The direct program costs attributable to NMFS are primarily the three full-time staff positions necessary to implement the program, which includes the review of the CDPs and CDP amendments, participation in the allocation process, and preparing rulemaking for any regulatory or FMP amendments that affect the CDQ Program. The NMFS FY 2003 program cost (including salaries, benefits, rent, travel, etc.) is approximately \$474,000.

The State also has program costs associated with the daily management of the program, administering the allocation process, and the review and processing of CDQ amendments. The CDQ groups pay an annual fee to cover the State's cost of administering the program. In FY 2005, the cost is \$306,200. While allowing for a portion (some or all) of the CDQ revenues to be spent on non-fisheries projects would require the Federal government to ensure that the CDQ groups do not exceed their individual limit, the action does not represent a significant increase or change in the amount or type of tasks currently required by NMFS or State staff.

4.7 CDQ Policy Committee Recommendation

The CDQ Policy Committee supported broadening the goal of the program to include some level of non-fisheries related projects, but was split on the specific options associated with this issue. Five of the eight voting committee members that were present supported Alternative 3, Option 3, which would allow each group to spend up to \$500,000, annually, on non-fisheries related projects.¹⁵

The committee supported continuing to allow the types of non-fishery projects that have been historically allowed (scholarships, training, etc.) and not subjecting these categories of projects to the non-fisheries cap. In addition, the committee recommended Suboption 1, which would require that any non-fisheries related

¹⁵ At the time of the committee meeting, the option supported was that each CDQ group could spend up to 20 percent of their previous year's pollock royalties or a maximum of \$500,000 annually on non-fisheries related projects. This option was subsequently divided into two separate options (Option 2 and Option 3).

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project be an economic development project in the region of Alaska represented by the CDQ group. At the time of the committee meetings (April and May 2001), the requirement that these projects be self-sustaining was not part of Suboption 1, and there was no discussion of the practical implications of the 'economic development' requirement. In addition, neither Option 5, which would expand the limit on non-fisheries related projects to \$1,000,000, nor Suboption 2, which would restrict non-fisheries related investments to education and training or general infrastructure projects, were considered by the committee. These options were approved by the Council for analysis subsequent to the CDQ Policy Committee meetings.

The remaining committee members opposed Alternative 3 for various reasons. Two members supported Alternative 4, which would eliminate the restriction on investing in non-fisheries related projects completely. Another member supported the concept under Alternative 3, but was concerned that non-fisheries related projects would be weighted the same as fisheries-related projects in the allocation process, thus potentially threatening the allocation to a group that is still trying to develop locally-based fisheries.

4.8 Summary of the Preferred Alternative

At the Council's June 2002 meeting, the Council approved a preferred alternative for each of eight specific issues related to the administrative and policy elements of the CDQ Program under BSAI Amendment 71, one of which was the issue of allowable investments. In April 2004, for reasons described in Section 1.2.6, NMFS proposed an approach to split out the analysis and decision on allowable investments and create a separate amendment and rulemaking package for this issue. The Council concurred with NMFS' proposed approach and amended its previous motion on BSAI Amendment 71 in April 2004, to split the FMP amendment package into two parts: 71a and 71b.

This analysis thus represents **Amendment 71a**, which addresses revisions to the purpose of the CDQ Program and the allowance for a portion of the CDQ groups' royalties to be spent on non-fisheries related projects. **Amendment 71b**, which will be subsequently submitted, will address the oversight issues and the CDQ allocation process. The Council's recommendation to move these issues forward as separate rulemaking packages and FMP amendments stems from concern that continued legal and policy questions about the appropriate role of NMFS and the State in the oversight of the CDQ Program are hindering the implementation of the non-fisheries projects allowance, for which no legal issues have been identified.

This amendment package under consideration (BSAI Amendment 71a) thus represents only a portion of the Council's preferred alternative on BSAI Amendment 71 from June 2002. This analysis has been restructured to address only the recommendations associated with Issue 7 of the original analysis. This section outlines each component of the preferred alternative with regard to the specific options and suboptions that were identified as decision points in Section 4.0. It is the combination of these elements which determine the whole of the Council's action:

Preferred Alternative on Allowable Investments by CDQ Groups:

- Allow each CDQ group to invest up to 20 percent of its previous year's pollock CDQ royalties in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum. (*regulatory amendment*)
- Require that any non-fisheries related investment be made in economic development projects in the region of Alaska represented by the CDQ groups and be self-sustaining. In-region extends to the borders of the 65 communities that participate in the CDQ Program. (*regulatory amendment*)

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- Clarify that investments in fisheries-related projects will receive greater weight in the allocation process than non-fisheries related investments. *(regulatory amendment)*
- Revise the statement of purpose for the CDQ Program as follows:
“The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an on-going, regionally-based fisheries economy and, as a second priority, to strengthen the non-fisheries related economy in the region.” (regulatory and FMP amendment)

The preferred alternative would make numerous changes to the existing CDQ Program in western Alaska, including changes to the CDQ allocation process, expansion of the program to allow limited investments in non-fisheries related projects, and specification of the role of NMFS and the State of Alaska in program oversight. Upon Secretarial approval, all of the elements in the Council’s preferred alternative would be promulgated in Federal regulations. However, the new goal and purpose statement for the program would also be included in the BSAI FMP.

The Council recommended allowing each CDQ group to invest up to 20 percent of its previous year’s pollock CDQ royalties, annually, in non-fisheries related projects. This represents the annual maximum amount of investment in non-fisheries related projects per group, although each group may choose to invest less than the maximum. The Council also required that any non-fisheries related investments subject to this annual limit be made in economic development projects in the region of Alaska represented by the CDQ Program and be self-sustaining. The Council clarified that in-region extends to the borders of the 65 communities that participate in the CDQ Program, meaning that each CDQ group is bounded by the communities represented by the program as a whole but is not limited to investments only in CDQ communities or its own group’s member communities.

The 20 percent annual limit adopted by the Council for investments in non-fisheries related projects is intended to relax the current fisheries related restriction enough to allow the groups needed flexibility in their regional investment mix and still maintain the focus of the program on developing fisheries related economies in western Alaska. This decision was based on public testimony, recommendations from the National Research Council, and support from the CDQ Policy Committee, which was comprised of representatives from each CDQ group.

Using the 2002 pollock royalties, this provision would have allowed the six CDQ groups combined to invest a maximum of about \$8 million in non-fisheries related projects in 2003. This represents about 11 percent of 2002 revenues or about 17 percent of total royalties from the 2002 allocations. While the Council could have selected a cap on non-fisheries related investments expressed in a fixed dollar amount per year, it determined that a percentage cap was more appropriate. As a percentage of each group’s pollock royalties, the limit on non-fisheries related investments accounts for the varying structure and investment mix of the groups, and does not constrain one group who may receive greater annual royalties to using a smaller percentage of their royalties on non-fisheries related projects in any given year. In addition, unless adjusted for inflation, using a fixed dollar amount would serve to decrease the real value each CDQ group could spend on non-fisheries related investments over time.

With this action, the Council is addressing the concern that a strict requirement on fisheries-related projects may be somewhat detrimental to the overall program in the future. This is based on the contention from the NRC and the CDQ groups that there will likely be some communities in which viable fisheries-related

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investments will be fully exploited in the future and others that have limited fisheries-related investments that would not be expected to provide a reasonable return. In addition, some communities are several miles from the Bering Sea, and thus a significant amount of the economic activity in those communities will be land-based. At some point, for lack of viable opportunities, a strict fisheries-related requirement may force a group to undertake an investment that is not a good business decision and/or would not promote economic diversity and sustainability at the community level. In addition, it may also cause the CDQ groups to pay a higher price when investing in a company or vessel than they would otherwise, if the CDQ groups are competing for opportunities in a limited pool of fisheries related investments. Allowing some level of annual investment in non-fisheries related projects is intended to prevent this policy dilemma; in effect, it may mitigate the risk that a group will be penalized in the allocation process for poor financial performance, due to a lack of viable fisheries-related investments in the region.

In addition, the Council recognized that several of the groups may need this flexibility in order to meet other important investment needs in the CDQ communities that are not fisheries-related, but would promote community development. This alternative would allow the groups to invest in non-fisheries related economic development projects that are *self-sustaining*, which was interpreted and discussed in the Council as meaning that the proposed investment must show a reasonable likelihood of a positive financial return. Thus, only non-fisheries related projects with an expectation of profit over time would be allowed. This provision was included in order to ensure that the CDQ groups' investments are consistent with their internal investment policies and that they continue to strive for a financial return from those investments. This would preclude a group from investing in general community infrastructure projects in which no financial return was expected, for example, building a road. While these types of projects may be part of the material need for community development, there were concerns expressed that allowing the CDQ groups to finance these projects would increase the reliance on the CDQ groups for public services for which the government is generally responsible.

The Council also recommended that when considering proposed CDPs, during the allocation process, the State and NMFS must give more weight to fisheries related projects than to non-fisheries related projects. This guidance is consistent with the change to the purpose statement, in that it identifies fisheries related projects as the first priority of the program, with non-fisheries projects as a secondary priority. This provision is intended to provide the State and NMFS with a clear hierarchy when considering proposed fisheries and non-fisheries projects in the allocation process, and indicate that the primary purpose of the program continues to be to provide the means for CDQ groups to support commercial fisheries business activities. The intent is that this guidance will be promulgated in regulation as a provision to clarify the allowance of non-fisheries related expenditures by the CDQ groups. NMFS and the State may determine if further guidance is necessary to implement the intent of this provision, specifically within the evaluation criteria or the regulations authorizing the allocation process.

The Council also recognized that, while the CDQ groups are currently technically restricted to investments in projects that are fisheries-related, some categories of investments are deemed acceptable and encouraged by the CDQ Team, such as investments in individual scholarships and training. As part of this preferred alternative, the Council approved codifying the types of investments that are allowed but that are not subject to the annual non-fisheries related limit that will be promulgated in Federal regulation, so that it is clear the type of investment to which the annual limit applies. Thus, the Council approved the following as expenditures or investments that may be made that are not subject to the non-fisheries related annual limit:

- Administrative expenses of the CDQ group
- Investments of cash in financial instruments such as stocks, bonds, certificates of deposit
- Investments in fisheries-related economic development projects
- Education, scholarships, and training
- Charitable contributions

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Thus, the annual limit (20 percent of previous year's pollock royalties) only applies to the non-fisheries related expenditures in economic development projects in the CDQ region and not to the categories of investment above. Under the Council's preferred alternative, any fisheries-related projects or other investments in the categories above are not subject to an annual limit, and this will be made explicit in Federal regulations.

Lastly, because the Council chose to broaden the CDQ Program to allow limited investment in non-fisheries related projects, it also decided to modify the purpose statement that provides general guidance as to the program's overall intent. As part of its preferred alternative, the Council recommended modifying the goals and purpose statement for the CDQ Program to the following:

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting, or supporting commercial fisheries business activities that will result in an on-going, regionally-based fisheries economy and, as a second priority, to strengthen the non-fisheries related economy in the region.

This statement is intended to reflect that the program's primary purpose remains in developing fisheries related economies in the region, and that a secondary purpose has been included to strengthen the non-fisheries related regional economies. The Council approved including this statement in both the BSAI FMP and Federal regulations and recognized that, with implementation of the 20 percent annual limit on non-fisheries related investments, the purpose statement will not be the primary source of guidance on fisheries-related investments.

4.8.1 NMFS' Proposed Implementation of the Preferred Alternative

Subsequent to the Council's selection of a preferred alternative, NMFS identified a few concerns related to implementation of the Council's intent. This section addresses how NMFS proposes to implement the Council's recommendations concerning non-fisheries investments and expenditures, specifically: 1) the recommendation to explicitly identify in regulation all allowable investments, whether fisheries or non-fisheries related, and 2) the purpose statement for the CDQ Program.

As part of the Council's decision on non-fisheries related investments, the Council recognized that some categories of investments that are not necessarily fisheries related, are deemed acceptable and encouraged by the CDQ Team, such as investments in individual scholarships and training. As part of this preferred alternative, the Council approved codifying the types of investments that are allowed but that are not subject to the annual non-fisheries related limit identified in the preferred alternative, so that it is clear the type of investment to which the annual limit applies. Thus, the Council approved the expenditures bulleted in the previous section as those that are not subject to the non-fisheries related annual limit.

The Council's intent was to thus continue to allow the above investments, and specify these allowances in regulation. The current regulations do not explicitly identify each category of allowable investment, they only serve to implement the intent that all CDQ projects, with limited exceptions, have a direct link to fisheries development. The exceptions are the other types of investments listed above: administrative expenses; investments in financial instruments; education, scholarships, and training; and charitable contributions. These types of investments have been made in relatively small amounts in the past, and are monitored through the annual audit and the allocation process. The intent of the Council's preferred alternative is to continue to permit the types of investments that have been allowed in the past, and to broaden the program to allow

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non-fisheries related economic development projects to a limited extent. Examples of charitable contributions that have been made in the past are donations to a local dance troop or sponsoring a school sporting event. While not expressly stated in regulation, general unspecified grants to communities have not been authorized in the past and have not been included as allowable charitable contributions.

As stated previously, the preferred alternative would not allow the CDQ groups to make unencumbered grants to their member communities, and this was made explicit in the discussion in the analysis. More than one CDQ group has expressed interest in using CDQ revenues for this purpose, and one group proposed giving \$25,000 in general grants to each of its member communities. However, the Council prohibited unencumbered grants when it clarified which types of non-fisheries expenditures would be allowed. The Council's preferred alternative expressly states that any non-fisheries related projects must be self-sustaining economic development projects within the CDQ region. Combined with the intent to continue to allow the types of projects that have been allowed in the past (scholarships, training, administrative expenses, financial instruments, and charitable contributions), NMFS believes that the Council did not intend to allow the CDQ groups to make unencumbered grants to the local governments of eligible communities.

In clarifying that the above list of expenditures is allowed, the Council did not recommend a specific limit on charitable contributions, and no limit was specified in the alternatives for analysis. Further research of the issue subsequent to final Council action indicates that the IRS provides the guidelines and definitions to identify organizations qualified to receive charitable contributions, and these include both nonprofit organizations and local governments. Thus, absent a limit on charitable contributions, the regulations may imply that the CDQ groups can make grants for unspecified purposes to the local governments of CDQ communities, and apply them to the category of "charitable contributions." These grants could then be used by local governments for any purpose, thereby creating a way for a CDQ group to fund projects that do not meet the fisheries and non-fisheries related requirements and are not subject to any limit. Staff contends that this was not the intent of the Council's action, otherwise the Council would have specified that community grants were allowed in the preferred alternative.

To address this potential concern, NMFS considered expressly prohibiting the CDQ groups from making unspecified grants of any amount to any organization, including the local governments or tribal organizations in the CDQ communities. This provision does not provide a satisfactory solution to the concern, however, as the CDQ groups could then give *specified* grants of any amount to the CDQ communities under the category of charitable contributions. Because charitable contributions are allowed under the program, and do not have specific limits or further definitions applied to the types of charitable contributions allowed, the CDQ groups would still be able to fund projects (without a specified limit) that do not meet the fisheries and non-fisheries related requirements of the overall program.

Given these concerns, NMFS thus proposes to establish a limit on charitable contributions, in order to meet the Council's overall intent and stay within the bounds of the current level of charitable contributions. Federal regulations would allow the CDQ group and its CDQ subsidiaries, in the aggregate, to annually contribute to non-fisheries related charitable organizations or programs, including governments of member communities, a total amount not to exceed \$2,500 per member community in the CDQ group. Charitable contributions that are fisheries related would continue to be allowed without an annual limit. This proposal appears to satisfy both the need expressed by the CDQ groups to provide general grants to their communities, and the Council's intent in the preferred alternative. NMFS has determined that the Council's intent cannot be implemented effectively without such a limit. Similar to the non-fisheries related projects, the annual audit must address the group's compliance with the limitations on charitable contributions.

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Note that compliance with both the limitations on non-fisheries expenditures and charitable contributions will be considered by the State and NMFS during the allocation process and the review of the CDPs. Expenditures on other allowable categories of investments, such as administrative expenses, investments of cash and financial instruments, and education, scholarships, and training, will also be clarified in regulation as allowable projects without limitation, although the amount and efficacy of these expenditures will also continue to be considered by the State and NMFS during the CDQ allocation process.

A similar need exists to more clearly define “education, scholarships, and training.” NMFS contends that the regulations implementing the Council’s intent should clarify the types of educational investments that have been historically allowed within the program, in order to eliminate any confusion during the allocation process. Thus, NMFS proposes to clarify that the category of expenditures related to education, scholarships and training extends only to individual scholarships and student loans paid to an educational program or institution. This includes tuition and other expenses associated with attending post-secondary education or vocational training, adult basic education, and professional or vocational retraining programs. The CDQ groups could not provide funding for infrastructure (construction or maintenance of a building or facility), equipment, or operating or administrative expenses of an education or training facility or program. Providing this further clarification of the Council’s intent will prevent future confusion regarding the types of education investments that can be made under this (unlimited) category.

Lastly, the Council’s preferred alternative proposes a modified goal and purpose statement for the CDQ Program. The current statement is found in Federal regulations at 50 CFR 679.1(e). The Council’s new purpose statement replace the current statement in Federal regulations and would also be placed in the BSAI FMP, as follows:

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting, or supporting commercial fisheries business activities that will result in an on-going, regionally-based fisheries economy and, as a second priority, to strengthen the non-fisheries related economy in the region.

NMFS proposes to re-word this statement so that it is more easily understandable, by splitting the statement into three sentences. NMFS also proposes changing “qualified applicants” to “CDQ groups,” since the term CDQ group is more commonly used, and these terms are interchangeable in Federal regulations. NMFS’ proposed changes to the purpose statement do not affect the intent of the statement approved by the Council:

The purpose of the CDQ Program is to allocate CDQ to CDQ groups representing eligible Western Alaska communities. The first priority for use of these allocations is to provide the means for investing in, participating in, starting, or supporting commercial fisheries business activities that will result in an on-going, regionally-based fisheries economy. The second priority is to strengthen the non-fisheries related economy in the CDQ region.

In sum, NMFS proposes to add to the Council’s preferred alternative in order to more effectively implement its intent. Specifically, the rulemaking implementing the preferred alternative would include:

- an annual limit on charitable contributions of \$2,500 per CDQ community represented by the group
- clarification that allowable investments in the ‘education, scholarships, and training’ category (no annual limit) means funding expenses related to individuals’ education or training programs. This category does not allow expenditures on the construction or maintenance of a building, equipment, or operating expenses of an education or training facility or program
- re-wording of the purpose statement

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5.0 CONSISTENCY WITH OTHER APPLICABLE LAWS

5.1 National Standards

Below are the ten National Standards as contained in the Magnuson-Stevens Act (MSA), and a brief discussion of the consistency of the proposed alternatives with each of those National Standards, where applicable.

National Standard 1 - Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery

None of the alternatives would change the process through which overfishing limits, total allowable catch limits (TACs), or optimum yields are established for the BSAI fisheries in general, including the CDQ fisheries. In addition, none of the alternatives would change the way the CDQ fisheries are conducted. Therefore, the alternatives would have no effect on overfishing or optimum yield from the fisheries. Additional information supporting the conclusion that these alternatives would have no effect on the BSAI fisheries is in Section 5.3 below.

National Standard 2 - Conservation and management measures shall be based upon the best scientific information available.

None of the alternatives considered in this analysis would change conservation or management measures that apply to the BSAI groundfish, crab, or halibut fisheries, including the CDQ harvests in these fisheries. Therefore, this action does not affect the scientific information used to manage the fisheries or the use of that information in conservation and management.

National Standard 3- To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

This action does not affect the fishery management aspects of the BSAI groundfish, crab, or halibut fisheries, including the CDQ fisheries. Therefore, the action would not affect the method for determining the TACs or the distribution of the TAC among geographic management areas.

National Standard 4 - Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The CDQ Program allocates quota to eligible Western Alaska communities, as required by Section 305(i) of the MSA. By design, this program provides benefits only to residents of certain Alaskan communities that meet eligibility criteria, first developed by the Council and implemented by NMFS in 1992, and then implemented through amendments to the MSA in 1996. However, the CDQ allocations are made only to CDQ groups representing eligible communities. The CDQ allocations are not made to individuals and regulations prevent any one CDQ group from being allocated an excessive share of the CDQ. Furthermore, the vast majority of Alaska residents are not eligible to participate in the CDQ program, so this action does not discriminate on the basis of state residency.

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National Standard 5 - Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

The amount of groundfish, prohibited species, halibut, and crab allocated annually to the CDQ Program is established in the MSA, the AFA, and the FMPs. Further allocations of these species are made to each CDQ group, based on their application through a Community Development Plan (CDP). Under the current regulations, these allocations are made based on evaluation criteria developed by the State of Alaska which include population, need, consistency of the CDP with the goals and purpose of the CDQ Program, past performance of the group in implementing its CDQ projects and providing benefits to the communities, and the potential for proposed CDQ projects to provide benefits to the communities. Economic efficiency, in terms of economic performance of the CDQ groups, is one of several evaluation criteria considered for making CDQ allocations among the CDQ groups. However, no changes to the annual amount allocated to the program or the process used to make the annual allocations to each group, is being considered in this action.

National Standard 6 - Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

None of the alternatives considered in this analysis would change conservation or management measures that apply to the BSAI groundfish, crab, or halibut fisheries, including the CDQ harvests in these fisheries.

National Standard 7 - Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

Oversight of the CDQ Program is conducted by both the State of Alaska and NMFS. The State is primarily responsible for developing CDQ allocation recommendations, day-to-day oversight of the economic development aspects of the CDQ Program, and management of the crab CDQ fisheries. NMFS is primarily responsible for reviewing the State's CDQ allocation recommendations, making the final decision on allocations, for general oversight of the State and CDQ groups in the economic development aspects of the program, and for management of the groundfish and halibut CDQ fisheries. Although this process may appear duplicative, each government agency has a different role in the process and the CDQ groups are not required to submit the same information to both the State and NMFS. However, none of the alternatives in this analysis affect the role of government oversight or the information requirements associated with the program.

National Standard 8 - Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The CDQ Program was developed to benefit western Alaska communities by allocating CDQ to CDQ groups representing eligible communities to provide the means for starting or supporting commercial fisheries business activities that will result in ongoing, regionally-based, fisheries-related economies. The alternatives addressed in this analysis will directly affect the six CDQ groups representing the 65 western Alaska communities that are currently eligible for the CDQ Program. This amendment represents a policy decision to modify the existing program to allow the groups to invest in a limited level of non-fisheries related

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projects, but the beneficiaries of the program (CDQ communities) would not change. In addition, the means for providing revenues to the CDQ groups would also not change. The CDQ groups would continue to receive allocations of multi-species CDQ and they would be authorized to harvest that quota or lease it to a fishing partner.

National Standard 9 - Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

None of the alternatives considered in this analysis directly affect the fishery operations in the CDQ Program. The alternatives would not change the amount of fish harvested in the CDQ fisheries, the type of gear used, the location of catch, the timing of the CDQ fisheries, or any regulations governing catch and bycatch in these fisheries. This analysis addresses proposed revisions to the policy and administrative regulations governing the program, to allow the CDQ groups to invest in non-fisheries related projects to a specified amount. Therefore, the proposed action is not anticipated to affect the level of bycatch in the CDQ fisheries.

National Standard 10 - Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The alternatives do not affect the total catch in the CDQ fisheries, the type of gear, location, or seasons in which CDQ fisheries may occur. Therefore, the alternatives under consideration would not have an impact on the safety of human life at sea.

5.2 Section 303(a)(9) - Fisheries Impact Statement

This section of the Magnuson-Stevens Act requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. The impacts of modifying the administration of the CDQ Program are discussed in the RIR in sections 1.0 through 4.0 of this document.

5.3 National Environmental Policy Act

The regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR 1500-1508 and NOAA Administrative Order (NAO) 216-6 allow some actions to be categorically excluded from both further environmental review and the requirement to prepare an environmental review document if the action individually or cumulatively does not have the potential to pose significant impacts on the quality of the human environment. Section 6.03.d.4 of NAO 216-6 specifically addresses the requirements for categorical exclusions for actions taken under the Magnuson-Stevens Fishery Conservation and Management Act. In addition, NAO 216-6 allows a categorical exclusion if a prior NEPA analysis was prepared for the same action and that analysis demonstrated that the action would not have a significant impact on the quality of the human environment (NAO 216-6, Section 5.05.b).

The Regional Administrator for the Alaska Region of NMFS determined, in a February 13, 2002, memorandum to the record, that the alternatives presented in this analysis, if implemented, would not individually or cumulatively have a significant effect on the human environment. Therefore, this action is categorically excluded under NAO 216-6 and NEPA from both further environmental review and the requirement to prepare an environmental review document. Following is the information contained in the memorandum describing the basis of this determination.

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The CDQ Program affects the human environment through the fisheries conducted by the CDQ groups to harvest CDQ allocations. The amount available for harvest by each of the six CDQ groups is determined by (1) the amount available for catch in the CDQ Program as a whole (the “CDQ reserves”), and (2) the percentage allocation of each CDQ reserve to individual CDQ groups. The alternatives under consideration would not change the process through which the CDQ reserves are established or the process through which allocations are made to individual CDQ groups.

The annual CDQ reserves for groundfish, prohibited species, halibut, and crab are determined by the total annual catch limit for each species and the percentage of each catch limit allocated to the CDQ Program. The total annual catch limits are established by NMFS for groundfish and prohibited species, by the International Pacific Halibut Commission for halibut, and by the State of Alaska for crab. The percentage of each catch limit allocated to the CDQ Program is determined by the American Fisheries Act (AFA) for pollock (10 percent), the Magnuson-Stevens Act for crab (7.5 percent), the FMP for all other groundfish and prohibited species (7.5 percent, except 20 percent for fixed gear sablefish), and 50 CFR 679 for halibut (20 percent to 100 percent). The environmental impacts of the annual allocations of groundfish and prohibited species to the CDQ Program are addressed by NMFS in the NEPA documents supporting the annual groundfish specifications process. NMFS is not required by NEPA to prepare environmental review documents associated with halibut and crab because these catch limits are not established by Federal actions.

The amount of CDQ catch available annually to each CDQ group is determined through a periodic, competitive allocation process. Specific percentage allocations or the amount of fish or crab harvested by an individual CDQ group do not significantly change the environmental impacts of the CDQ fisheries as a whole, because the CDQ groups conduct their CDQ fisheries in a similar manner. For example, all six groups harvest pollock CDQ allocations using primarily large trawl catcher/processors that harvest pollock at the same time and in the same places that they harvest non-CDQ pollock. All six groups harvest cod using large hook-and-line catcher/processors that operate during the spring, summer, and late fall when the non-CDQ cod fisheries are closed. Halibut CDQ allocations are harvested primarily in small, near-shore fisheries in areas around the local CDQ communities. The crab CDQ allocations are harvested by large vessels fishing shortly after the non-CDQ crab fisheries close.

Therefore, changes in the CDQ allocation process would not significantly change the impact of the CDQ fisheries on the environment because this impact is determined primarily by the total amount of CDQ harvested rather than the amount harvested by an individual group. Any impacts on the environment as a result of groundfish harvests off Alaska are considered annually in the NEPA documents prepared for the groundfish harvest specifications. Regardless, none of the alternatives under consideration propose direct changes to the CDQ allocation process – they only propose allowing the CDQ groups to propose non-fisheries related projects in the context of their CDPs during the allocation process. It is uncertain to what extent the CDQ groups would propose non-fisheries related projects in their CDPs should this action be approved, and whether their individual group allocations would be subsequently affected. However, given that changes in the allocations to each group would not significantly change the impact of the overall CDQ fisheries on the environment, this proposed change to the policy and administrative aspects of the CDQ Program is determined to have an insignificant environmental impact.

The CDQ Program began in 1992 with an allocation of 7.5 percent of the Bering Sea and Aleutian Islands area (BSAI) pollock total allowable catch. This allocation was made as part of Amendment 18 to the BSAI FMP and Amendment 23 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). Amendments 18/23 implemented the initial “inshore/offshore” allocations of pollock in the BSAI and pollock and Pacific cod in the Gulf of Alaska. NMFS prepared a supplemental environmental impact statement

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(SEIS) for this action which analyzed the impact on the human environment of the pollock and Pacific cod allocations, including the pollock CDQ allocation. The final SEIS was dated March 5, 1992. This analysis provided a description of the physical, biological, economic, and social environment and analysis of the impact of the alternatives on groundfish stocks, bycatch, marine mammals, seabirds, coastal and marine habitat, the fishing industry, and fishing communities.

The administrative regulations governing the CDQ allocation process and oversight of the economic development aspects of the CDQ Program were implemented in 1992 (57 FR 54936; November 23, 1992). The alternatives considered by the Council would revise these administrative regulations. An Environmental Assessment (EA) was prepared for the 1992 implementation of the administrative regulations (final EA dated December 7, 1992). In this EA, NMFS determined that “the CDQ program redistributes the harvest of fisheries resources but will not change the total amount landed” and that “[p]hysical impacts on the environment associated with any of these alternatives are not expected to differ significantly from the current fishery. Physical impacts are associated with differences in fishing gear used, locations where fishing occurs, processing locations, etc.”

The administrative regulations for the CDQ Program were revised in 1998 when NMFS implemented Amendment 39 to the BSAI FMP, Amendment 41 to the GOA FMP, and Amendment 5 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (63 FR 30381, June 4, 1998). Amendment 39/41/5 implemented the groundfish and crab license limitation program and expanded CDQ allocations to include 7.5 percent of all BSAI groundfish, prohibited species, and crab. These additional CDQ allocations created the “multispecies” CDQ Program. The Council prepared an EA for Amendment 39/41/5 (final EA dated September 9, 1997). Based on this EA, NMFS concluded that the license limitation program and the expanded CDQ allocations would not have a significant impact on the environment. With respect to the CDQ Program, the EA concluded “[T]he benefits of this type of fishery have been exhibited in the current pollock CDQ program where the result has been a slower paced fishery, higher value fisheries relative to the open access fishery, generally lower bycatch rates of PSC species, lower discard rates, and a more stable planning environment for the participants.”

In assessing the potential significance of the impacts of an action on the human environment, NAO 216-6 (section 5.05.c) requires determination that the proposed action does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, does not have uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, does not result in cumulatively significant impacts, and does not have any adverse effects upon endangered or threatened species or their habitats.

The alternatives under consideration by the Council address the economic development aspects of the CDQ Program. They are administrative and procedural in nature and they would not change the impact of the harvest of CDQ allocations on the environment. Therefore, the alternatives do not involve a geographic area with unique characteristics, they are not likely to have uncertain environmental impacts or unique or unknown risks, and they would not have any adverse effects upon endangered or threatened species or their habitats. The alternatives are also not controversial based on potential environmental consequences. The alternatives may be slightly controversial with regard to the specific limit established on non-fisheries related projects, but are not controversial with respect to the overall action to allow non-fisheries related projects within the program. In addition, because the alternatives would not result in impacts on the environment, they would not establish a precedent or decision in principle about future proposals that would affect the human environment. Furthermore, the alternatives do not individually have any impact on the human environment, so they also would not have a cumulative impact on the human environment.

5.4 Regulatory Flexibility Act

5.4.1 Analytical Requirements

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either ‘certify’ that the action will not have a significant adverse impact on a substantial number of small entities, and support that certification with the “factual basis” upon which the decision is based; or it must prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities. When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis (FRFA).

Analytical requirements for the IRFA are described below in more detail. In the case of the alternatives considered in this analysis (BSAI Amendment 71a), the Council has recommended a preferred alternative, and, if approved by the Secretary, NMFS will develop proposed regulatory amendments to implement the Council’s preferred alternative. The IRFA contained in this section reflects the portion of the preferred alternative, addressing allowable non-fisheries related projects, selected by the Council in June 2002.

The IRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:

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1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. The use of performance rather than design standards;
4. An exemption from coverage of the rule, or any part thereof, for such small entities.

In determining the scope, or ‘universe’, of the entities to be considered in an IRFA, NMFS generally includes only those entities, both large and small, that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are design to address RFA compliance.

5.4.2 What is a Small Entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a ‘small business’ as having the same meaning as ‘small business concern’ which is defined under Section 3 of the Small Business Act. ‘Small business’ or ‘small business concern’ includes any firm that is independently owned and operated and not dominate in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor... A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3.5 million criterion for fish harvesting operations. Finally, a wholesale business servicing the fishing industry is a small businesses if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical

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or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805, are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines "small organizations" as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

The six CDQ groups are considered small organizations under the RFA, both because they are non-profit corporations and because they represent the 65 CDQ communities, which are each small governmental jurisdictions, in their own right.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

The 65 western Alaska communities eligible for the CDQ Program are small governmental jurisdictions.

5.4.3 Reason for Considering the Proposed Action

The CDQ Program was developed by the Council for the purpose of developing sustainable fishery-based economies in western Alaska communities, by providing opportunities to participate in the BSAI fisheries, in order to promote their overall economic well-being.

The program was founded on the following elements:

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1. Community-based planning and goal setting. Community Development Plans (CDPs) are developed by community representatives on the CDQ groups' boards to meet their social and economic goals.
2. Allocations to the CDQ groups would be based on a balance between performance and need. Performance is measured through the goals, objectives, and milestones of the CDPs with an emphasis on delivering benefits to the communities and residents of western Alaska.
3. Accountability. The oversight role of the State of Alaska and NMFS is intended to ensure accountability of the CDQ groups in implementing their CDPs and meeting the goals of the program.

Although the primary objective of the CDQ Program is to help the participating communities to establish a viable presence in this capital-intensive industry, over time there has been a growing need to take into account the changing nature of the CDQ groups, the conditions in which they operate, and the communities they serve to benefit. The problem, given the growth and maturation of the CDQ Program over the last eight years, is that the restriction on the type of allowable projects the CDQ groups can invest in (fisheries related) may hinder the CDQ groups, and the success of the program overall, as the groups face changes in their fisheries investment opportunities and their communities' needs. Relaxing the restriction on fisheries related projects to include some limited level of investment in non-fisheries related projects was considered in order to allow the groups viable opportunities in which to invest in their local communities, and to prevent the groups from being forced into less attractive investments, simply because they happen to meet the fisheries related mandate. Absent this action, the CDQ groups may be unnecessarily limited from furthering their participation in and support of overall community development within their member communities, including the non-fisheries based economies in the region.

A related reason for considering the proposed action is that the type of allowable project or expenditure under the CDQ Program is not explicit in current Federal regulations. The categories of allowable projects, whether fisheries or non-fisheries related, need to be clarified in Federal regulations, so that the CDQ groups and the public clearly understand the limits of the program. This analysis considers several alternatives, options, and suboptions for changes in the regulations governing the CDQ Program, to address the concern with the fisheries-related restriction, the lack of regulatory language defining the types of allowable projects, and the goal and purpose statement guiding the program.

5.4.4 Objectives of, and Legal Basis for, the Proposed Action

The objective of the alternatives described in this analysis is to improve the administration of the CDQ Program, by clarifying the types of allowable investments that the CDQ groups may make and expanding the program to potentially allow for some level of non-fisheries related investments in economic development projects in the CDQ region. The Magnuson-Stevens Fishery Conservation and Management Act provides the legal basis for this proposed action.

5.4.5 Number and Description of Small Entities Affected by the Proposed Action

The alternatives addressed in this analysis will directly regulate the six CDQ groups (representing the 65 western Alaska communities) that are eligible for the CDQ Program. The proposed actions do not directly regulate any other entities, large or small, beyond these six. The CDQ groups are:

Aleutian Pribilof Island Community Development Association (APICDA),
Bristol Bay Economic Development Corporation (BBEDC),
Central Bering Sea Fisherman's Association (CBSFA),

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Coastal Villages Region Fund (CVRF),
Norton Sound Economic Development Corporation (NSEDC), and
Yukon Delta Fisheries Development Association (YDFDA).

Table B.1 in Appendix B contains a list of the communities represented by each of the CDQ groups, however, none of these communities are “directly regulated” by any of the proposed actions, so they are included here only for reference purposes. The action proposed in the preferred alternative would provide more flexibility for the CDQ groups in terms of their allowable investments, but would not require any action by any of the groups to invest in non-fisheries related projects. The preferred alternative only establishes an explicit limit on non-fisheries related projects and provides explicit constraints on the location and type of non-fisheries projects allowed (economic development projects in the location of the CDQ region). Each group may decide the appropriate mix of fisheries and non-fisheries related investments up to the limit, and any group may choose to invest less than the maximum. The six CDQ groups are all small entities under the Regulatory Flexibility Act because they meet the SBA criteria for "small" non-profit corporations.

5.4.6 Recordkeeping, Reporting and Compliance Requirements

The IRFA must contain a description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

All of the alternatives analyzed in this document would directly regulate only the six CDQ groups, all of which are identified as “small entities” under the RFA (see Section 5.4.5). Note however, that no action would be required by any of the CDQ groups as a result of this action. Each group may decide the appropriate mix of fisheries and non-fisheries related investments up to the limit established in the preferred alternative, and any group may choose to invest less than the maximum. The impacts of the proposed action are described in detail in Section 4.0, and analysis of these impacts will not be reproduced in this section. This section will summarize the recordkeeping, reporting, and compliance requirements of the alternatives and generally identify whether a particular alternative may have a lower impact on the CDQ groups than other alternatives.

The CDQ groups are required by current regulations to submit a considerable amount of information to the State and NMFS in their CDPs, amendments to the plans, annual financial reports, and annual budget reports, as described in Sections 3.0 and in the regulations in Appendix C and D. Some of the alternatives could increase or modify requirements to submit information to the State or NMFS, which could increase the costs to some or all of the CDQ group.

There are four alternatives proposed to address the types of allowable projects, two of which (Alternative 3 and 4) would revise NMFS regulations to allow some level of investment in non-fisheries related projects. Alternative 1 is the no action alternative, which would maintain the fisheries related restriction in the current CDQ Program, and use the goal and purpose statement in Federal regulations to provide the primary regulatory guidance on this issue. Alternative 2 would also continue to require that the CDQ groups invest only in fisheries-related projects, but it would clarify NMFS regulations as follows: 1) add a specific prohibition against CDQ groups investing in non-fisheries related projects; and 2) clarify that this prohibition does not apply to certain categories of expenditures or investments.

Alternative 3 proposes four options at varying levels of maximum allowable investment in non-fisheries related projects, and Alternative 4 proposes that there be no restrictions on the amount of investment in non-fisheries related projects. The no action alternative and any alternative that allows some level of investment

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in non-fisheries related projects necessitates that the CDQ groups comply with reporting requirements and submit annual financial statements to demonstrate compliance with Federal regulations with respect to the type of projects the CDQ groups are undertaking. This means that under Alternatives 1 and 2, the groups would continue to be required to show that they only invested in fisheries-related projects, with limited allowable exceptions. That is, there are no changes to the current reporting and record keeping requirements attributable to adoption of either of these alternatives.

Under any of the options under Alternative 3, each group would have to comply with reporting requirements in order to prove that they did not exceed the maximum allowable investment in non-fisheries related projects. If the groups are allowed to invest some level of funds in non-fisheries related projects under Alternative 3, each CDQ group would be required to modify their annual audit to provide: 1) the total pollock royalties received by the group in the preceding year, which is the baseline amount authorized for non-fisheries related investments during the current year; and 2) information indicating the group's compliance with the limitations on non-fisheries investments during the previous year.

Only Alternative 4 has the potential to have a lower impact on small entities with regard to recordkeeping and reporting requirements, relative to the other alternatives under consideration, as the groups would be allowed to invest in any type of project. Under this alternative, the Council could have considered a reduced government role and fewer reporting requirements, as it would remove the need for the government to make a determination about whether a specific project fits the fisheries-related requirement. Alternative 4 would not have eliminated all of the reporting requirements, however, as the groups would still need to submit CDPs to the State and NMFS to facilitate the competitive allocation process and provide a basis for the evaluation of each group in order to determine their individual group allocations. Alternative 4 also would not eliminate the need to submit sufficient information to determine whether the CDQ groups overall are benefitting their member communities.

The Council's preferred alternative is to allow each CDQ group to invest up to 20 percent of its previous year's pollock CDQ royalties in non-fisheries related projects. Any non-fisheries related investment must be in economic development projects in the region of Alaska represented by the CDQ groups and be self-sustaining (Alternative 3, Option 2, Suboption 1, Suboption C). This means that the CDQ groups would need to provide additional information in the annual audit to indicate compliance with the limitations on non-fisheries investments. Thus, the Council chose an alternative that may have slightly higher reporting requirements than that associated with Alternative 4, but not significantly higher than the requirements associated with taking no action.

The Council's selection of this alternative is based on a policy decision to expand the categories of allowable investments by the CDQ groups to a limited extent, without changing the fundamental and original purpose of the program to develop fisheries-related economies in western Alaska. This decision was supported by public testimony, recommendations from the National Research Council, and the majority of the CDQ Policy Committee. Eliminating the fisheries related restriction altogether, which would support reducing the reporting requirements of the CDQ groups, was not supported by the majority of CDQ group representatives or public testimony, and was not fully consistent with the stated objectives of the CDQ program. The Council determined to uphold the original goal of the program, but provide some needed flexibility that stems from the concern that a strict requirement on fisheries related projects may be somewhat detrimental to the overall program in the future. This is based on the contention from the NRC and the CDQ groups that there will likely be some communities in which viable fisheries-related investments will be fully exploited in the future and others that have limited potential for fisheries-related investments, and these may not be expected to provide a reasonable return. In addition, a significant portion of some of the communities' economic activity is land-based, and the groups may better serve the local economies by be able to invest in non-fisheries related businesses.

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The Council determined that the benefits of reduced reporting that may be associated with Alternative 4 were not sufficient to modify the fundamental underpinnings of the CDQ Program to develop and support fisheries related projects in the region. The CDQ groups provided public testimony overwhelmingly in favor of the decision to allow non-fisheries related projects, supporting the premise that any additional reporting requirements were of negligible cost compared to the benefits expected by this action. In addition, the preferred alternative only creates the opportunity for the CDQ groups to expand their investment possibilities, it does not force them to do so. A CDQ group is only subject to additional reporting requirements if they voluntarily decide to undertake non-fisheries related investments in accordance with this action and, thus, would only choose to do so if the expected benefits exceeded costs..

5.4.7 Relevant Federal Rules that may Duplicate, Overlap, or Conflict with Proposed Action

The analysts are not aware of any other Federal rules that would duplicate, overlap, or conflict with this proposed action. Public comment was requested on whether this assessment is correct, and no public comment was received on this issue.

5.4.8 Description of Significant Alternatives

The list of alternatives under consideration is provided in Section 1.4. In sum, there are four alternatives proposed to address the types of allowable projects in the CDQ Program, two of which (Alternative 3 and 4) would revise NMFS regulations to allow some level of investment in non-fisheries related projects. Alternative 1 is the no action alternative, which would maintain the fisheries related restriction in the current CDQ Program, and use the goal and purpose statement in Federal regulations to provide the primary regulatory guidance on this issue. Alternative 2 would also continue to require that the CDQ groups invest in fisheries-related projects, but it would clarify NMFS regulations as follows: 1) add a specific prohibition against CDQ groups investing in non-fisheries related projects; and 2) clarify that this prohibition does not apply to certain categories of expenditures or investments, such as scholarship or financial instruments. Alternative 3 proposes four options at varying levels of maximum allowable investment in non-fisheries related projects, which would be implemented in Federal regulation, and Alternative 4 proposes that there be no restrictions on the amount of investment in non-fisheries related projects. The economic, operational, and administrative impacts of these alternatives are described in Section 4.0.

The Council identified a broad range of alternatives for analysis with regard to the issue of allowable investments, ranging from no action to eliminating the fisheries-related restriction on allowable investments in entirety. The Council's preferred alternative is to allow an amount of up to 20 percent of a CDQ group's previous year's pollock royalties to be spent on non-fisheries related projects annually. The Council further required that these non-fisheries related projects be self-sustaining economic development projects in the CDQ region. The Council modified the purpose statement for the program to reflect this secondary priority of investing in the non-fisheries related economy in the region. The preferred alternative, as selected by the Council, represents the "least burdensome" alternative, with respect to small entities, that fully comports with the stated objectives for the proposed action.

5.5 Executive Order 12898

E. O. 12898 focuses on environmental justice in relation to minority populations and low-income populations. The EPA defines environmental justice (EJ) as the: "fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations, and policies." This executive order was spurred by the growing need to address the impacts of environmental pollution on particular segments

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of our society. This order (Environmental Justice, 59 Fed. Reg. 7629) requires each Federal agency to achieve environmental justice by addressing “disproportionately high and adverse human health and environmental effects on minority and low-income populations.” The EPA responded by developing an Environmental Justice Strategy which focuses the agency's efforts in addressing these concerns.

In order to determine whether environmental justice concerns exist, the demographics of the affected area should be examined to determine whether minority populations and low-income populations are present, and if so, a determination must be made as to whether implementation of the alternatives may cause disproportionately high and adverse human health or environmental effects on these populations. Environmental justice concerns typically embody pollution and other environmental health issues, but the EPA has stated that addressing environmental justice concerns is consistent with NEPA and thus all Federal agencies are required to identify and address these issues.

The 65 eligible CDQ communities in western Alaska comprise one of the most economically depressed areas of the nation, and thus a major goal of the CDQ Program is to allow these communities to accumulate sufficient capital from fishing activities in the BSAI to generate sustainable, fisheries-related, local economies. In addition, by definition, an eligible community must be certified by the Secretary of Interior as a Native village under the Alaska Native Claims Settlement Act. In total, about 84 percent of the population in these communities is comprised of Alaska Native residents (U.S. Census, 2000). Because the CDQ Program was specifically designed to foster fishery participation among, and direct fishery benefits toward, minority populations and low-income populations in the economically underdeveloped communities in western Alaska, all of the directly affected entities (CDQ communities) would be considered both low-income and comprised of minority populations under this order.

To the extent that any Federal action negatively impacts the CDQ program and communities, these may be considered environmental justice impacts. The existing conditions of the CDQ region are presented in the Steller Sea Lion Final Supplemental SEIS in Appendix F(4), and additional information relating to environmental justice issues specific to Alaska Native populations is in Section 3.12.2.9 and 2.5.1.4 (November 2001). However, the action proposed in this amendment is specific to the administration and policy aspects of the CDQ Program; thus, because all of the directly affected entities are of similar demographics, there would not be disproportionate impacts to a specific minority or low-income population. In addition, it has been determined that the proposed action to allow CDQ groups to invest a limited portion of their annual pollock royalties in non-fisheries related economic development projects does not have any significant individual or cumulative environmental or human health effects, thus no distinct population, minority or otherwise, should be affected in this regard.

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Appendix A. CDQ Policy Committee Recommendations – Report to Council June 2001

This report contains all of the CDQ Policy Committee's recommendations on the nine issues discussed at the May 2001 meeting. The recommendations relevant to the action proposed in BSAI Amendment 71a are found under Issue 7 (p. A-10).

Report and Recommendations of the NPFMC CDQ Policy Committee

May 24 - 25, 2001 – Anchorage, Alaska
Hilton Hotel - 8:30 am - 5 pm

Committee: Rick Lauber (Chair), Ragnar Alstrom, Eugene Asicksik, John Bundy, Jeff Bush, Morgen Crow, Phillip Lestenkof, John Moller, Robin Samuelsen, Greg Baker (absent)

Staff: NMFS - Sally Bibb
NPFMC - Nicole Kimball
State of Alaska - Bryce Edgmon, Laird Jones, Greg Cashen

Other: Todd Loomis, Eric Olson, Steve Rieger, Don Mitchell, Roger DuBrock, John Lamont, Norman Cohen

Agenda: Provide the Council with a list of issues and alternatives for analysis as identified at the April committee meeting, and if possible, recommend to the Council the committee's preferred alternative on each issue.

The CDQ Policy Committee was formed to address issues related to Community Development Quota (CDQ) oversight responsibilities of the State and NMFS, as well as provide policy recommendations to the Council on changes that may be needed to regulations governing the role of NMFS and the State, the CDQ allocation process, and the administration of the CDQ Program. The Council requested a report from the committee no later than June 2001. In April, the committee identified nine issues and several alternatives and options under each issue, for further discussion at the next meeting. The committee met again on May 24 - 25, and used this list of issues as a framework document by which to make specific recommendations to the Council, if general consensus could be reached. The committee did not reach consensus on several issues, and majority/minority opinions are also noted in the following report. This report encompasses the minutes of the May committee meeting, as well as the final committee recommendations on the scope of analysis to the Council.

This report lists each of the nine issues as identified and addressed by the committee. The committee recommendation is listed first under each issue, and the relevant committee discussion, motion, and final vote follow the recommendation.

ISSUE 1: Periodic or Permanent CDQ Allocations

COMMITTEE RECOMMENDATION

Alternative 2, Option 2: Establish a fixed allocation cycle of 3 years. Develop an escape clause so that in extraordinary circumstances the State could recommend and implement a mid-cycle change to an allocation upon approval of the Council.

Committee Discussion

The Committee discussed all of the alternatives under Issue 1, but focused primarily on Alternative 2, which would establish a fixed allocation cycle. Several of the committee members supported recommending a 3-year allocation cycle. The general consensus is that a change is needed to the current 1 or 2-year cycle, as developing a CDP is

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relatively expensive and burdensome to the groups. Most of the groups also found that implementing a CDP within a two-year period is fairly difficult, and a shorter cycle tends to force the group to act too conservatively to provide a good investment for the communities in the region. A three-year cycle would allow the communities relative stability and reasonable expectations for the CDP, without establishing a permanent allocation.

The State recommended establishing a two-year cycle in regulation, consistent with their written comments provided to the committee prior to the meeting. The State is concerned that extending the allocation cycle to three years is too long to wait to make adjustments if unforeseen events change a group's ability to harvest its allocation or if other circumstances external to the program necessitate a change in the allocations. In addition, the State contends that a shorter allocation cycle is appropriate in order to keep the groups accountable to the milestones identified in their CDPs, as well as to provide incentives for improvement.

Two members supported establishing a permanent allocation (Alternative 3), but stated that a three-year cycle would be a preferable second choice.

In order to mitigate the State's concern with unforeseeable circumstances and a longer fixed allocation cycle, the Chairman suggested including an "escape clause", in which the State would retain flexibility to react to statutory changes, external impacts, and environmental concerns. The escape clause would need to be identified in regulation in order for the State to implement changes without necessitating a regulatory or plan amendment to do so. The State suggested incorporating language that would require Council approval to make any mid-cycle changes the State recommends, so that the groups would have the opportunity to provide comments to the Council on any proposed changes. The State anticipates that the clause would only be invoked in the most extraordinary of circumstances, but contends that it is important to have that flexibility available.

The committee discussed the idea of adding an escape clause and generally agreed that should the State or the Council determine a need to revisit the allocations before the end of the three-year cycle, the issue would then be placed on the Council agenda. The State noted that the groups themselves would likely notify the State that a mid-cycle change is necessary. In this event, the first question for the Council would be whether to reconsider the allocations mid-cycle. If the Council agrees to reconsider the allocations, then the entire allocation process would be re-initiated.

Sally Bibb noted that the current CDQ regulations provide for transfers of CDQ allocations within an allocation cycle. Using the transfer provision to change allocations probably would only be used if the CDQ group giving up CDQ was willing to do so. She expressed concern with the process involved in reallocating quota from a CDQ group that was unwilling to have the quota reallocated and whether this process could be carried out before the three-year allocation cycle expired.

Jeff Bush moved that the committee recommend Alternative 2, Option 2: Establish a fixed allocation cycle of three years, with an escape clause to be developed so that in extraordinary circumstances the State could recommend and implement a mid-cycle change to an allocation, upon approval of the Council.

The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC). NSEDC objected with the concern that the groups would not be involved in the decision should a mid-cycle allocation change be determined necessary. APICDA favored a permanent allocation.

ISSUE 2: Define the role of government in oversight of the CDQ Program

COMMITTEE RECOMMENDATION

Alternative 2: Specifically identify elements of the government's responsibility for CDQ program administration and oversight of the economic development elements of the program. Government oversight of the CDQ program and the CDQ groups is limited by the following purposes:

1. Ensure community involvement in decision-making;

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2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest by verifying CDP milestone compliance and financial performance;
3. Ensure that internal investment criteria and policies are established and followed;
4. Ensure that significant investments are the result of reasonable business decisions, i.e., made after due diligence and with sufficient information to make an informed investment decision; and
5. Ensure compliance with legal program requirements.

Committee Discussion

John Bundy (Glacier Fish) handed out copies of substitute language for Issue 2, Alternative 2, as a motion for addressing the parameters and limitations to government oversight. It was noted that the intent is to limit government oversight without excluding the business assistance role the State has previously undertaken. That role is viewed as a service provided to the CDQ groups and was agreed should not be eliminated.

While not in the original proposed language, the State suggested adding “ensure compliance with legal program requirements” so that it is explicitly stated that the State has an oversight role in other aspects of the program. The example of predatory practices was used: if a group engages in predatory practices, with the willful intent to put another group out of business, the State would retain the authority to discourage that practice during the allocation process. The suggested language was added as a friendly amendment.

Sally Bibb (NMFS) questioned whether the list of responsibilities applied equally to the State and Federal governments or whether they are intended to be divided among the agencies. It was noted that even if the committee intends this list as primarily functions of the State, if language is added to the FMP or the regulations, it could also become the responsibility of NMFS.

One member noted that government oversight is necessary to protect the intent of the program and the beneficiaries/residents in these communities, and thus should not focus on oversight of CDQ managers. It was suggested that oversight instead be tied more closely to the allocation process. The maker of the motion clarified that his intent with outlining these oversight responsibilities is based on the assumption that the allocation process has already occurred, and that oversight is still necessary to ensure that management is acting effectively. While the true accountability should lie with the residents of the CDQ communities, the assumption is that some level of government oversight is going to be necessary, and that the groups should have input as to the appropriate parameters. The maker of the motion did not intend for the list to address the allocation process.

The committee discussed at length the responsibility of the government to “audit CDP milestones” as originally proposed. The State questioned whether use of the word “audit” implies that the committee would like the State to undertake a more formal audit process, in order to audit all of the CDP milestones and not just the financial statements. It was clarified that the intent of the motion is not to expand government oversight beyond its current bounds, but to continue the audit requirement of the financial statements as well as a review (not formal audit) of the goals and objectives in the CDPs. The language should not imply that the current financial statement audit requirement be removed or that the current audit process be expanded, but it should convey that the State continue its role in tracking and reviewing the milestone and financial performance of the groups.

The Chair noted that (c) in the draft issues/alternatives list covers the financial audit requirement and thus a separate notation for that responsibility may not be necessary. It was suggested to delete (e): audit CDP milestones, and to add explicit language that CDP milestone compliance and financial performance would continue to be reviewed by the State.

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prohibited from adopting regulations necessary to comply with Federal law (the Magnuson-Stevens Act) and the FMP if limited to this list of government oversight responsibilities. NMFS confirmed that the goals and purpose of the program would still exist in the FMP regardless of any oversight responsibilities identified in regulation, and additional regulations could also be implemented to support those goals.

John Bundy moved the language provided for Alternative 2, to limit and specify government oversight in regulation, with revisions made by the committee as referenced above. The motion passed with one objection (Moller, APICDA). APICDA objected on the basis that the motion effectively reflects the current oversight responsibilities of the State even though they are not currently specified in regulation. APICDA noted support for a very limited government oversight role, applied to the program as whole, and not to each individual group.

ISSUE 3: CDQ Allocation Process - Type of Quotas

COMMITTEE RECOMMENDATION

Alternative 1: Status quo. CDQ and prohibited species quota (PSQ) are specified by species, area, and gear type (sablefish and halibut). Each CDQ group is eligible to receive a percentage allocation of each CDQ or PSQ reserve as recommended by the State. The State decides how to balance demographic or socioeconomic factors with performance criteria.

Committee Discussion

The discussion of this issue revolved around whether to establish a foundation quota versus a performance quota, or some combination of each, as opposed to the current wholly competitive process. While the overall importance of the topic was noted (as identified during the April committee meeting as a priority issue), the committee discussed the feasibility of taking up this issue in the timeframe allotted. The State suggested that this is a far more complicated issue than the committee can deal with in one meeting, and the State does not support establishing a foundation quota.

The foundation versus performance quota concept was suggested by the National Research Council (NRC) in its 1999 report on the CDQ Program. The following is excerpted from page 95 of the NRC report:

“The foundation quota (likely more than half of the allocation) would be allocated on measures of population, income, employment, and proximity to the fishery being allocated. The performance quota (the remainder) would be allocated based on clearly defined performance measures such as accomplishments of the Community Development Plan goals, compliance with fishing regulations, quality of Community Development Plans, and so forth.”

One member noted that the original intent was for the CDQ program to be entirely performance-based, in order to ensure real-time benefits to each CDQ community. Because the concept of a foundation quota is generally discussed in terms of establishing a fixed portion of the quota based on population, the committee primarily discussed the issue in that context. Those not in support of a foundation quota generally agreed that population should be one consideration, but not the only criteria for receiving quota. The hypothetical used was that the largest group (by population) could have the poorest record of supplying benefits to their communities. Some members expressed concern that a foundation quota would also provide incentive for communities to drop out of their current CDQ groups and apply for their own (guaranteed base) allocations, which could potentially erode the entire program.

CBSFA strongly supports the foundation quota plan, but only for the pollock allocations. Other members, while not supporting a foundation quota, thought that if the Council did establish a foundation quota it should apply to crab, pollock, cod, and halibut.

The committee recognized that its time could be spent more productively on other issues and agreed to move on.

The Chair noted that because there is not significant support for establishing a foundation-based quota, the committee would not be recommending any changes to the current system. In effect, the committee recommends the status quo (Alternative 1).

ISSUE 4: CDQ Allocation Process - The Evaluation Criteria

COMMITTEE RECOMMENDATION

Alternative 2: The criteria for making CDQ allocations should include but are not limited to the following:

1. Number of participating communities, population, and economic condition.
2. A CDP that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional (or community) economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional (or community) economic development.
4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. The CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 CFR 679.1(e).
7. In areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

The State will develop a scorecard evaluation process for the above criteria, in consultation with the CDQ groups. (The State would provide a rationale for each of the scores on each of the listed criteria. The criteria will not be subject to a numerical weighting scheme and are not necessarily given equal weight by the State.)

The purpose of the CDQ program is to benefit eligible Western Alaska communities. The primary purpose is not to use the CDQ program as a tool to achieve other government policies. If other government policies are involved and relate to allocations, milestones, or performance measurement, they must be explicitly identified, after consultation with the CDQ groups, and agreed to by the Council.

Committee Discussion

The committee generally agreed that the current allocation process is not adequate. The State recognized problems in the past with having the CDQ groups develop and agree on a set of criteria, as each group typically advocates for the criteria in which they are strongest. This is the approach captured in Alternative 3, under the H.R. 553 proposed legislation. The Chair questioned whether development of the criteria could be effectively delegated to the groups as proposed in H.R. 553, as only one group would need to object in order to prevent consensus. In effect, the responsibility of developing the criteria would then revert back to NMFS and the Council.

NMFS noted that Congress may pass legislation (H.R. 553) allowing the groups to develop their own criteria, which could effectively bypass the Council decision-making process, if the CDQ groups agree on criteria. However, should the Council determine that they want the groups or committee to recommend a set of evaluation criteria, it would still need to go through the public process of the Council and NMFS before it could be ultimately approved.

The State questioned whether the real issue is not the content of the criteria but whether it needs to be a lesser number of criteria combined with a more transparent process. The committee also raised the question of whether it should address this issue at all or whether it should wait for the outcome of the APICDA lawsuit, which is largely based on the evaluation criteria. Doubting that the courts would take on the task of developing the criteria and not wanting the Council process to be dictated by external sources, the committee generally agreed that

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waiting for a court decision was not an adequate solution. More discussion ensued on allowing the groups to get together outside of the committee to develop and agree upon the appropriate criteria. However, the committee generally agreed that the likelihood of complete consensus is low, which would put the responsibility for developing the criteria back with the Council and NMFS.

One member suggested using the Coastal Villages (CVRF) proposal of four basic criteria as a starting point. The CVRF proposal was provided to the committee previous to the meeting. CVRF stated that their proposed criteria was largely based on the criteria that was generally agreed to by the rest of the groups in previous attempts to gain consensus on the evaluation criteria. After much discussion, the committee largely agreed that delaying the issue was not an adequate solution, and that the CVRF proposal represented a good framework with which to begin the process.

The State suggested adding a “scorecard” to whatever criteria is recommended, so that each group could see exactly which factor lowered or raised their overall score. The State cautioned about numerically weighting the scores, as the weighting becomes increasingly important as you narrow the number of criteria. The State noted that some subjectivity would remain in the process, as each criteria would not be numerically weighted, and the State would have to consider which criteria were more important. However, the State did note that fewer criteria and the scorecard method would improve the transparency of the process.

The committee clarified that this would still allow the State and NMFS to approve different allocations of individual species to different groups. This would continue to place the burden on the groups to explain their harvest strategies in the CDPs, and allow the groups to maximize their abilities and allocations.

Bundy moved the CVRF criteria with the modifications described above. Robin Samuelsen (BBEDC) moved to add three of the existing State criteria to the CVRF list, for a total of seven. He also moved to change the introductory language to: “criteria should include but is not limited to the following”. This motion was accepted as friendly.

The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC). APICDA objected on the basis that the State would still be weighting the criteria subjectively, which doesn’t adequately resolve the issue of transparency. APICDA also did not support narrowing the criteria at this point. Alstrom (Yukon Delta) noted a concern with allocations based on past performance of regional or community economic development, but did not object to the overall motion. Lestenkof (CBSFA) generally objects to using population and number of communities as evaluation criteria, but also did not object to the overall motion.

Friday: Bundy moved additional language clarifying the intent and purpose of the CDQ program and explicitly requiring the State to make the groups aware, and get Council approval, of any government policies that may affect the allocation process. The motion was amended to add this language, with one objection (Samuelsen, BBEDC). BBEDC objected because the purpose and intent of the program is already stated in the FMP and NMFS regulations, and it contends that it is not necessary to imply that the program is used to implement other State policies. BBEDC did not object to the overall motion.

ISSUE 5: Public Comment on Allocation Recommendations; Appeals Process

COMMITTEE RECOMMENDATION

Alternative 2: Develop a comment period for the State’s allocation recommendations such that the State is required to:

1. Issue initial CDQ allocation recommendations and an explanation of changes from the previous allocations;
2. Accept comments from the public and the CDQ groups;
3. Issue final allocation recommendations and a written response to comments, including the reason for any changes from the State’s initial allocation recommendations;

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4. Consult with the Council on the final allocation recommendations; and
5. Submit final recommendations to NMFS.

The committee also recommends that the Council consider defining a more active role for NMFS as an appeals forum.

Committee Discussion

The committee discussed the roles of the State versus NMFS, and the Chair noted that the Council typically agrees with the State recommendation, as it has limited information to warrant overturning a State recommendation. The idea that follows is that the Council may not have enough time or information to represent an adequate appeals forum. NMFS explained that while the public and the CDQ groups have the opportunity to comment on the State recommended allocations (at the Council meeting), the current process does not have an administrative appeals process through NMFS. The current process does not require NMFS to provide another public comment period, and NMFS bases the final decision primarily on information submitted by the State and on any comments by the Council. There is a distinct difference between a public comment period and a response to those comments versus a formal appeals process with a group of people that are appointed for that purpose.

NMFS does have the authority to disapprove the State's recommendations, even though the agency has not done so in the past. The State has a lot of the responsibility for the program, and NMFS does not provide detailed instructions to the State (in the form of guidelines) on how to make the allocations.

Sally Bibb stated that Alternative 3, Option 2, to develop an appeals process similar to that established in the crab FMP, may not be appropriate but was included because it is an appeals process for management responsibilities that are deferred by the Council and NMFS to the State of Alaska. The process by which we defer crab management responsibility to the State may have some parallels to CDQ Program. She noted that the lack of an appeals process is addressed in the APICDA lawsuit. The committee also discussed the potential for one group to hold up the rest of the allocations if they are involved in an appeal.

One member recommended establishing an annual meeting between the State and the CDQ groups, sometime between when the State announces the allocation recommendations (September) and when the Council approves the allocations (October). This allow the groups a forum to discuss the rationale behind the initial State recommendations. Another member noted that such a meeting would be an appropriate time to correct any errors in the application. It was suggested that to date, the groups may not have used the Council process to the fullest extent possible to make a pitch to change a State recommended allocation.

The State is concerned with the time necessary to conduct a full administrative appeal, likely much more time than a CDQ group could afford to wait. The State also noted that there is already an opportunity to comment on the recommendations to the Council, and that if there is an egregious mistake, the State could make an adjustment (under current process). If we formalize that process to allow the groups to challenge an allocation, it would be in the groups best interest to challenge every single allocation.

APICDA stated its concern that NMFS should play a larger role in the allocation process, and not just approve the State's recommendations. APICDA also thinks we should address the transparency of the process, so that other State policies do not influence the allocation process. The committee discussed the confidentiality issue and the fine line that exists between transparency in the process and keeping a group's financial information confidential. **Robin Samuelsen moved Alternative 2, to develop a comment period for the State's allocation recommendations, with the modification to allow both the public and the CDQ groups to comment on the initial allocation recommendations. Language was also included to reflect a requirement that the State provide a rationale for any changes from the previous year's allocation.** It was clarified that the recommendation is to establish a comment and response period and not a formal appeals process.

The motion passed with two objections (Bush, State of Alaska and Moller, APICDA). The State objected

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(minimally) on the grounds that the additional step added to the process will have no meaningful effect, due to the low likelihood that a public hearing would be productive and result in a re-allocation of all of the other groups' allocations. APICDA objected on the grounds that the motion doesn't change or strengthen NMFS' role in the allocation process. NMFS noted that this alternative keeps the agency role about the same, primarily process-oriented and limited to ensuring that the State completes the process to make the allocation recommendations but not conducting an independent review of those recommendations.

John Bundy moved that a statement be added to the recommended alternative to reflect that the committee recommends that the Council consider defining a more active role for NMFS as an appeals forum. This language passed with one objection (Samuelson, BBEDC). BBEDC contends that NMFS' current role is appropriate and does not want NMFS to take on additional duties as it would slow down the entire process.

ISSUE 6: Extent of Government Oversight (Definition of a CDQ Project)

COMMITTEE RECOMMENDATION

Alternative 2: Implement revisions to the CDQ Program administrative regulations based on the State of Alaska's proposal.

These revisions would reduce requirements for expenditures that require review and prior approval by the State of Alaska and NMFS, and would clarify that oversight of the CDQ Program by the State of Alaska and NMFS includes the activities of businesses that the CDQ groups own.

Include a rebuttable presumption regarding State oversight of CDQ businesses, so that if a CDQ group owns 50 percent or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise effective management control over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment (not as a CDQ-owned business) and thus subject to lower oversight and reporting requirements.

Committee Discussion

Asicksik (NSEDG) moved Alternative 4, which mirrors the Congressional legislation proposed that specifies that oversight extend only to activities of the CDQ group and not to the businesses owned by the CDQ group.

Samuelson (BBEDC) noted that he cannot support Alternative 4 and offered Alternative 2, which mirrors the Bright New World proposal developed by the State and the CDQ groups, as a substitute. BBEDC could not support Alternative 4 because of the inherent ability for a group to set up several "shell" corporations as subsidiaries, in order to avoid government oversight. BBEDC contends that this does not support the intent of the Council. Further, Alternative 2 represents the concept that the groups themselves worked to develop, and it would provide the groups with maximum flexibility while keeping investments made with CDQ money within the purview of government oversight.

The State also voiced support for Alternative 2 and discussed the need for an amendment. Currently, if a group owns 50 percent or more of a subsidiary company, there is a nonrebuttable presumption that the subsidiary is subject to oversight of the program. The State noted that there has always been a concern with that percentage. The reason for the 50 percent ownership clause is that greater than 50 percent ownership technically allows that entity (the CDQ group) to control the corporation, even if the CDQ group is not effectively or practically controlling the corporation.

The State offered an amendment to include a rebuttable presumption, so that if a CDQ group owns 50 percent or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise effective

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management control over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment and thus subject to lower oversight and reporting requirements. Motion accepted as friendly.

The committee discussed the rationale behind requiring oversight over a subsidiary company that the group does not have effective control over. The State's position is that the CDQ groups engage in two types of activities for the benefit of their communities. The first is as direct participants of those activities. The second is an investment activity, whereby a group may invest in a fishing operation that they do not effectively control but will receive a return on their investment as a means to raise capital. In the latter case, the State can't expect a CDQ group to control a company in which they may be a majority owner but do not have effective control over, and the rebuttable presumption clause mitigates that problem. The Bright New World proposal makes a distinction between these two types of activities and cleans up the regulations that define the differences. As part of that proposal the regulations would address the difference between core projects (which require a substantial amendment for a change to a CDP) and non-core projects (which require a technical amendment for a change to a CDP). In the context of this alternative, if a subsidiary is majority-owned and effectively controlled by the CDQ group, then a substantial amendment is needed for a change to the CDP to undertake a new activity or investment that is not covered in the CDP. If not, that level of review and procedure may not be necessary.

Based on some of the discussion regarding effective management control, Bundy offered substitute language for Alternative 2 that would delete reference to 50 percent ownership of the subsidiary company in the State's proposal and base the extent of government oversight solely on whether the CDQ group asserts effective management control over the company. The effect is that it doesn't matter whether the group is a majority owner, it only depends on whether the group has control over the operations of the subsidiaries. Motion failed for lack of a second.

The motion is to recommend Alternative 2, with the additional language provided by the State regarding the rebuttable presumption. The motion carried 5-4. The objecting votes were from Asicksik (NSED), Bundy (Glacier Fish), Lestenkof (CBSFA), and Moller (APICDA). Baker was absent. NSED strongly supports Alternative 4, with very limited government oversight. APICDA noted that they have lost faith in the allocation process as administered by the State and could not support an alternative which solidified the State's oversight role. CBSFA objected on the grounds that the committee should spend more time developing the criteria to ensure good decision-making.

BBEDC expressed frustration with the direction of the committee with respect to this issue, primarily because part of being responsible to the community residents is encompassed in the need for State oversight. The State also voiced concerns about objections to the regulatory changes included in the Bright New World proposal, as the CDQ groups were primary contributors to that proposal.

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ISSUE 7: Allowable Investments by CDQ Groups

Requirements would apply to the CDQ group itself and its effectively controlled subsidiaries, as recommended in the preferred alternative for Issue 6.

COMMITTEE RECOMMENDATION

Alternative 3: Revise NMFS regulations to allow investments in non-fisheries related projects.

The following represents the maximum amount of investment in non-fisheries related projects on an annual basis. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

Option 2: Allow the CDQ groups to invest up to 20 percent or a maximum of \$500,000 of their pollock royalties in non-fisheries related projects.

Suboption 1: Require that any non-fisheries related investments be made in economic development projects in the region of Alaska represented by the CDQ group.

Committee Discussion

The committee generally agreed that a firm interpretation of, or modification to, the current regulations is needed.

Yukon Delta is concerned with the potential for not having any fisheries-related projects to invest in during particular years, due to stressed commercial fisheries in its region. The current requirement that all CDQ projects are fisheries-related may inhibit the group from investing in any projects during a given year, and securing any return for their communities. A suggestion was made to add flexibility to the regulations so that groups can take advantage of alternative, better opportunities, especially in the case that there aren't any fisheries-related projects to invest in. Yukon Delta voiced support for Alternative 3, Option 2, which would limit the amount of investments in non-fisheries related projects to a maximum of 20 percent of pollock royalties. It was noted to keep in mind the variations in the group's investment abilities—while 20 percent may represent a lot of money for a larger group, it is a fairly modest amount for a smaller group. Yukon Delta also supports Suboption 1, which would require any non-fisheries related projects to be done in the region represented by the CDQ group.

Another member, while voicing support for Alternative 2, Option 3, expressed concern with a policy that would limit the investment to a specific percentage, as it may influence a group to invest in a project solely for that reason and not because it is a good business decision. It was stated that the groups need flexibility to meet the needs of each group's individual region.

NSEDC supports a less restrictive option (Alternative 4) which would allow the CDQ groups to decide what percentage of their total revenues they wish to invest in non-fisheries related projects, without a limit.

BBEDC noted problems with the fact that some communities represented by the groups are well above the commercial fishing district. In order to make meaningful investments in those communities the program needs additional flexibility regarding this issue. BBEDC also cautioned the committee and suggested imposing a maximum dollar amount to be invested in non-fisheries related projects, so that the CDQ groups do not get taxed with taking over State responsibilities for such projects as fixing roads, hiring teachers, etc.

The Chair also cautioned the committee that while one purpose of the CDQ program is to make a profit, that is not the sole purpose. Degrading the public perception of the program may risk eroding support for the entire program.

Sally Bibb noted the need to clarify in regulation the ability of the CDQ groups to spend money on non-fisheries related projects such as scholarships, cultural events, and charitable contributions. The need to clarify our policy on these types of expenditures is particularly important if the Council decides to limit non-fisheries related expenditures to "economic development projects."

CBSFA supported Alternative 2 (prohibiting non-fisheries related projects) and cited the original intent of the

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program. Concern was voiced that a non-fisheries related project would be weighted the same as a fisheries-related project, and potentially affect a group's allocation that is still trying to meet the "fisheries" intent of the program.

Samuelsen moved Alternative 3, Option 2, with additional language to institute a cap of \$500,000 of pollock royalties that can be invested in non-fisheries related projects. Suboption 1 would also apply, to require non-fisheries projects to be done in-region. It was clarified that this limitation would be applied on an annual basis, and that the standard non-fishery projects that are currently allowed (scholarships, etc.) would continue to be allowed and not subject to the cap.

A few members voiced opposition to the \$500,000 cap. A motion was made to delete the cap but failed.

The State voiced concern with not restricting the types of non-fisheries related projects, and made a motion to amend the language so that non-fisheries projects would be limited to *economic development* projects and not encompass community social programs. The amendment was accepted as friendly, with no objections from the committee.

Alternative 3, Option 2, Suboption 1, as amended above by the State, passed 5-3. Lestenkof (CBSFA), Moller (APICDA), and Asicksik (NSED) objected based on the concerns expressed above during the discussion.

ISSUE 8: Governance

After some discussion, **the committee voted not to take action on Issue 8**, as no change is determined necessary. It can be removed from the list of issues and alternatives for analysis.

ISSUE 9: Other CDQ Administrative Issues

NMFS noted that most of the administrative changes under this issue would be incorporated, should the Council initiate an analysis, regardless of the committee's recommendations. These are primarily reporting changes based on the State's recommendations to simplify and streamline the regulations regarding the CDP process. In effect, all of these changes would be considered in an analysis for a regulatory package regardless of whether the committee takes action on Issue 9.

Given the above discussion, the committee supports the Council incorporating the options under Issue 9 in an analysis.

OTHER ISSUES

Fishery management issues:

NMFS organized these issues in a separate 3-page paper which was distributed to the committee prior to this meeting. Although extremely relevant, these issues are considered separate from the policy issues the committee was tasked to address. These issues will be addressed in an initial analysis for the October 2001 Council meeting.

The committee took no action on these issues.

Continuation of the committee:

The committee was initially created on the basis that it would address the policy priorities of the committee, provide recommendations to the Council, and subsequently be dis-banded. **The committee recommends the Council keep the committee intact for at least another year, to address on-going and upcoming CDQ issues on an as needed basis.**

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Appendix B. CDQ Communities and CDQ Groups

Table B.1: 2000 U.S. Census Data

APICDA (6)	Pop.	Toksook Bay	532
Akutan	713	Tuntutuliak	370
Atka	92	Tununak	325
False Pass	64	TOTAL	7,855
Nelson Lagoon	83		
Nikolski	39	NSEDC (15)	Pop.
Saint George	152	Brevig Mission	276
TOTAL	1,143	Diomedea	146
		Elim	313
BBEDC (17)	Pop.	Gambell	649
Aleknagik	221	Golovin	144
Clark's Point	75	Koyuk	297
Dillingham	2,466	Nome	3,505
Egegik	116	Saint Michael	368
Ekuk	2	Savoonga	643
Ekwok	130	Shaktolik	230
King Salmon	442	Stebbins	547
Levelok	122	Teller	268
Manokotak	399	Unalakleet	747
Naknek	678	Wales	152
Pilot Point	100	White Mountain	203
Port Heiden	119	TOTAL	8,488
Portage Creek	36		
South Naknek	137	YDFDA (6)	Pop.
Togiak	809	Alakanuk	652
Twin Hills	69	Emmonak	767
Ugashik	11	Grayling	194
TOTAL	5,932	Kotlik	591
		Mountain Village	755
CBSFA (1)	Pop.	Nunam Iqua	164
Saint Paul	532	TOTAL	3,123
CVRF (20)	Pop.		
Chefornak	394		
Chevak	765		
Eek	280		
Goodnews Bay	230		
Hooper Bay	1,014		
Kipnuk	644		
Kongiganak	359		
Kwigillingok	338		
Mekoryuk	210		
Napakiak	353		
Napaskiak	390		
Newtok	321		
Nightmute	208		
Oscarville	61		
Platinum	41		
Quinhagak	555		
Scammon Bay	465		

Total Population of 65 CDQ Communities = 27,073

**Appendix C. State of Alaska Regulations at 6AAC93
WESTERN ALASKA COMMUNITY
DEVELOPMENT QUOTA PROGRAM
(as amended August 19, 1999)**

6 AAC 93.010 PURPOSE OF REGULATIONS.

The purpose of this chapter is to implement the state's role in the Western Alaska Community Development Quota Program (CDQ Program) for the Bering Sea and Aleutian Islands Area under 50 C.F.R. 679.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24
AS 44.33.020 (11)

6 AAC 93.012 REFERENCES TO FEDERAL LAW.

In this chapter, each reference to a provision of 50 C.F.R. 679 refers to that provision as revised as of June 9, 1999.

History - Eff. 8/19/99, Register 151
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24
AS 44.33.020 (11)

6 AAC 93.015 CDQ TEAM; RESPONSIBILITIES; LEAD STATE AGENCY.

(a) To carry out the state's role in the CDQ program under 50 C.F.R. 679, a CDQ team shall perform functions as directed in and under this chapter. The CDQ team consists of

- (1) the commissioner of the Department of Community and Economic Development, or one or more of the commissioner's representatives from that department, including one person to act as CDQ manager;
- (2) the commissioner of the Department of Fish and Game, or one or more of the commissioner's representatives from that department; and
- (3) one or more other state employees or state officials designated jointly by those commissioners, if additional members of the team would be beneficial.

(b) The Department of Community and Economic Development is the lead agency. CDQ program material submitted under this chapter shall be submitted to the lead agency.

(c) To fulfill the purpose of this chapter, including providing accountability to the CDQ program, the CDQ team shall

- (1) solicit submittals of community development plans (CDP) from eligible communities;

- (2) review and evaluate proposed CDPs;
- (3) make recommendations regarding CDQ allocations and changes to allocations;
- (4) review and make recommendations regarding amendments to approved CDPs;
- (5) monitor the performance of each CDQ group in achieving the group's milestones and objectives in its CDP;
- (6) seek to ensure consistency between the CDQ program standards in 6 AAC 93.017 and a CDQ group's activities that are subject to this chapter and 50 C.F.R. 679; and
- (7) based on reports and other information obtained under this chapter, prepare and submit to the governor, for the governor's review, approval, and necessary action, the state's annual progress report described in 50 C.F.R. 679.30(g) and (h).

(d) The governor will, in the governor's discretion, delegate in writing the responsibility for carrying out one or more duties of the governor under this chapter to the CDQ team.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24
AS 44.33.020 (11)

Editor's Notes - The mailing address for submitting material under this chapter is: CDQ Team, Office of the Commissioner, Department of Community and Economic Development, P.O. Box 110803, Juneau, Alaska 99811-0803.

6 AAC 93.017 CDQ PROGRAM STANDARDS.

To carry out the state's role under 50 C.F.R. 679 and this chapter, the CDQ team shall apply the standards listed in (1) - (9) of this section, as applicable. The CDQ team shall determine whether

- (1) a CDP provides specific and measurable benefits to each community participating in the CDP;
- (2) as part of a CDP, a CDQ project provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities;
- (3) a proposed CDP has the support of all participating communities;
- (4) each CDQ project listed in a CDP has the support of the applicant's or CDQ group's board of directors, reflected by official action of the board;
- (5) before initiating a proposed CDQ project, a CDQ group exercised a level of due diligence that reflects the value of the investment, the risk involved, and the type of project;
- (6) a reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group;
- (7) the CDQ group has minimized legal and financial risk;
- (8) the CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 C.F.R. 679.1(e); and
- (9) in areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

History - Eff. 8/19/99, Register 151
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24
AS 44.33.020 (11)

6 AAC 93.020 CDQ APPLICATION PERIOD.

(a) Within a reasonable time before an application period is to begin, the CDQ team shall

- (1) establish the application period by scheduling a deadline for receipt of proposed CDPs from qualified applicants and by scheduling a projected time frame for
 - (A) initial evaluation;
 - (B) holding a public hearing to discuss all CDPs received; and
 - (C) final review;
- (2) publish a notice that announces the CDQ application period, states the allocation cycle, and states the deadline for submitting a proposed CDP; the notice must be published in at least one newspaper of general circulation in Western Alaska and in at least one newspaper of general circulation in the state; and

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(3) mail a copy of the notice to each eligible community.
(b) Except as provided in [6 AAC 93.075](#) (b), the deadline for submission of a proposed CDP set by (a)(1) of this section may not be less than 14 days after publication of the notice under (a) of this section.

(c) If, after publication of the notice under (a) of this section, the CDQ team determines that it is necessary to change the allocation cycle, the CDQ team shall notify all applicants and eligible communities and publish notice of the change.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

6 AAC 93.025 REQUIREMENTS FOR SUBMITTING A PROPOSED CDP.

(a) To apply for an allocation under 50 C.F.R. 679, a qualified applicant must submit to the CDQ team, on or before the deadline set under [6 AAC 93.020](#), a complete proposed CDP that contains the information required by 50 C.F.R. 679.30(a), including

(1) a statement that the applicant is a qualified applicant as defined in 50 C.F.R. 679.2; this statement must be accompanied by a certificate of incorporation showing that the applicant is a nonprofit corporation formed under AS 10.20;

(2) a statement as to whether the applicant is also the managing organization for the proposed CDP;

(3) a statement that each community participating in the proposed CDP is an eligible community as defined in 50 C.F.R. 679.2;

(4) with the list of communities participating in the CDP required by 50 C.F.R. 679.30(a)(1)(iv),

(A) the population of each community;

(B) the economic conditions in each community; and

(C) evidence that the applicant has developed an effective outreach project to keep participating communities informed about the CDQ group's activities and to facilitate community input throughout the course of the CDP;

(5) for each member of the applicant's board of directors, a letter of support or election results from the board member's eligible community and a statement of support from the governing body of each community participating in the proposed CDP; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(6) for each species allocation, evidence, such as a contract with a business partner, that the applicant has not obligated, and does not intend to obligate, further allocations to a third party;

(7) for an applicant that is also a managing organization,

(A) evidence that the managing organization has a board of directors with a membership composed of at least 75 percent resident fishermen from the community or group of communities participating in the CDP, with at least one member from each community; and

(B) a statement of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(8) for a managing organization that will participate in a fishery on behalf of the applicant, but is not the applicant, a statement

of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(9) information regarding the particular benefits that an allocation under the CDP would generate for the Bering Sea and Aleutian Islands region; in addition, the applicant may provide information regarding any benefits to the state or the United States;

(10) the applicant's existing and foreseeable business relationships; to meet the requirement of this paragraph, the applicant shall

(A) provide copies of any contractual service arrangements dealing with legal, lobbying, audit, accounting, allocation management, investment research, fund management, and similar services;

(B) provide copies of profit sharing arrangements;

(C) provide copies of funding and financing plans; and

(D) describe each type of relationship, including joint ventures, loans, partnerships, corporations, and, if applicable, distribution of proceeds;

(11) a copy of the investment policies that the applicant will follow for

(A) for-profit CDQ projects;

(B) infrastructure CDQ projects;

(C) fund and cash management CDQ projects; and

(D) other applicable CDQ projects;

(12) as part of the detailed description of each CDQ project required by 50 C.F.R. 679.30(a)(1)(i), information that

(A) identifies the project as an active or proposed CDQ project;

(B) describes the project's normal scope of operations; and

(C) indicates whether an active project should be classified as a core or noncore CDQ project;

(13) a milestone table that sets out specific and measurable objectives for each CDQ project and dates for achieving each objective;

(14) budgets, including

(A) a general budget for the proposed CDP that identifies all allocation revenue, project revenue, and project expenditures for the entire period for the proposed CDP;

(B) an annual budget listing detailed expenses for each CDQ project for the first year of the proposed CDP; and

(C) an annual comprehensive budget for the allowable administrative expenses, as previously determined by the CDQ team, specifically indicating the expenses that are chargeable to the managerial, general administrative, and policy phases of a CDQ group and the group's projects;

(15) a description of how the applicant plans to report financial and audit information to the CDQ team throughout the course of its CDP, in accordance with [6 AAC 93.050](#); and

(16) any additional information that the CDQ team finds is necessary to determine whether to recommend approval of the proposed CDP under [6 AAC 93.040\(c\)](#).

(b) An eligible community may not

(1) submit more than one proposed CDP during a single CDQ application period; or

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(2) participate in more than one CDP; this paragraph does not prevent an eligible community from participating in halibut allocations that are restricted by regulatory areas of the International Pacific Halibut Commission and 50 C.F.R. 679.30.

(c) Except for circumstances that the CDQ team finds were beyond the applicant's control, the CDQ team may not evaluate a proposed CDP received after the deadline set under 6 AAC 93.020 .

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24
AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015 .

6 AAC 93.030 INITIAL EVALUATION OF PROPOSED CDPs.

(a) The CDQ team shall perform an initial evaluation of a proposed CDP submitted under 6 AAC 93.025 to determine whether the CDP is complete. Within 15 days after a proposed CDP is received, the CDQ team shall notify the CDP applicant of any information needed to make the CDP complete. The applicant must submit the needed information within 10 days after being notified by the CDQ team. If, after the initial evaluation period, the CDQ team finds that additional information is needed for completeness, the applicant will have 10 days after notification to provide the information.

(b) After the initial CDP evaluation, the CDQ team shall schedule a public hearing under 6 AAC 93.035 as required by 50 C.F.R. 679.30(b).

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24
AS 44.33.020 (11)

6 AAC 93.035 PUBLIC HEARING.

(a) The CDQ team shall schedule at least one public hearing on all pending complete proposed CDPs, providing for a teleconference site in each geographical area that is subject to a proposed CDP.

(b) The CDQ team shall provide notice of the date and location of a public hearing

(1) to each applicant whose proposed CDP is the subject of the hearing;

(2) through newspaper publication; in addition, notice may be provided through other media; and

(3) to any other person the CDQ team believes will be interested in a pending CDP.

(c) A public hearing under this section must be recorded and transcribed. The transcript of the public hearing will be made available to the public, upon request, at the same time that the transcript is submitted under 6 AAC 93.045

(d) Repealed 8/19/99.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24
AS 44.33.020 (11)

6 AAC 93.040 FINAL EVALUATION OF PROPOSED CDPs [COMPLETE CDP APPLICATIONS]

(a) After the public hearing under 6 AAC 93.035 , the CDQ team shall evaluate all complete proposed CDPs to determine whether the CDPs are consistent with the standards in 6 AAC 93.017 and meet the applicable requirements of this chapter

and 50 C.F.R. 679.

(b) The CDQ team shall consider the following factors when reviewing a complete proposed CDP:

(1) the number of participating eligible communities and

(A) the population of each community; and

(B) the economic conditions in each community;

(2) the size of the allocation requested by the applicant and the proper allocation necessary to achieve the milestones and objectives as stated in the proposed CDP;

(3) the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency;

(4) the degree, if any, to which each CDQ project is expected to generate capital or equity in the local fisheries economy or infrastructure, or investment in commercial fishing or fish processing operations;

(4) the degree, if any, to which each CDQ project is expected to generate

(A) capital or equity in the local fisheries economy or infrastructure; or

(B) investment in commercial fishing or fish processing operations;

(5) the applicant's contractual relationship, if any, with joint venture partners and the managing organization;

(6) the applicant's and the applicant's harvesting and processing partners', if any, involvement and diversity in all facets of harvesting and processing;

(7) the coordination or cooperation with other applicants or CDQ groups on CDQ projects;

(8) the experience of the applicant's industry partners, if any;

(9) the applicant's CDQ projects for employment, education, and training that provide career track opportunities;

(10) the benefits, if any, to the state's economy or to the economy of communities that are not eligible to participate in the CDQ program that are in addition to the benefits generated by the proposed CDP for participating communities;

(11) a demonstration, through the information submitted under 6 AAC 93.025(a)(11), that the applicant has a formal, effective administrative process that sets out sound business principles and examples of due diligence that the applicant will exercise;

(12) the development, if any, of innovative products and processing techniques as well as innovation in harvesting gear for conservation and maximum utilization of the fishery resource;

(13) the applicant's ability to maintain control over each of its allocations;

(14) the capital or equity generated by the applicant's CDQ projects for fisheries-related business investment;

(15) the past performance of the applicant and the applicant's industry partners, as appropriate;

(16) the applicant's transition plan, including the objectives set out in the milestone table submitted under 6 AAC 93.025

(a)(13);

(17) for each CDQ project, the inclusion in the proposed CDP of realistic measurable milestones for determining progress;

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(18) the degree of participating community input in developing the proposed CDP;

(19) the likely effectiveness of the outreach project described in 6 AAC 93.025(4)(C); and

(20) comments provided by other agencies, organizations, and the public.

(c) After evaluation under this section, the CDQ team shall transmit to the governor for the governor's review and necessary action each proposed CDP and the CDQ team's evaluation and recommendation regarding each CDP. The governor will then make a written finding that a proposed CDP either

(1) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the National Marine Fisheries Service (NMFS) for approval for an allocation in the amount requested by the applicant;

(2) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the NMFS for approval with a reduced allocation from the amount initially requested by the applicant; or

(3) does not meet the requirements of this chapter and 50 C.F.R. 679 and will not be recommended to the NMFS for approval.

(d) If there is a sufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion, recommend all of those CDPs to the NMFS for approval.

(e) If there is an insufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion and after consultation by the CDQ team under (f) of this section,

(1) apportion the available quota among the applicants whose CDPs will be recommended for approval and will recommend the apportionment to the NMFS for approval; or

(2) select those complete proposed CDPs that the governor believes best satisfy the objectives, requirements, and criteria of the CDQ program and will recommend those CDPs to the NMFS for approval; a recommendation under this paragraph may also include a recommendation for an apportionment under (1) of this subsection.

(f) Before the CDQ team recommends an apportionment of the quota under (e) of this section, it shall consult with the applicants that might be affected by the proposed apportionment. The CDQ team may request an applicant to submit a revised CDP to assist the CDQ team in determining the

(1) economic feasibility and likelihood of success of the proposed CDP with an allocation of fishery resource less than that requested; and

(2) particular benefits that may be derived by participating communities affected by an allocation of fishery resource less than that requested.

(g) In apportioning the quota of fishery resource under (e) of

this section, the governor will consider the information specified in this chapter and 50 C.F.R. 679 and seek to maximize the benefits of the CDQ program to the greatest number of participating communities.

(h) Before forwarding recommendations to the NMFS under 6 AAC 93.045, the governor will, or, at the governor's direction, the CDQ team shall, consult with the North Pacific Fishery Management Council regarding the proposed CDPs to be recommended by the governor for allocations and incorporate any comments from the council into the written findings required under (c) of this section and 50 C.F.R. 679.30(d).

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

6 AAC 93.045 RECOMMENDATIONS TO THE NMFS REGARDING PROPOSED CDPs.

After making written findings under 6 AAC 93.040 regarding the complete proposed CDPs, the governor will

(1) forward the proposed CDPs to the NMFS with written findings, rationale, and recommendations for approval of proposed CDPs and CDQ allocations; and

(2) notify in writing each CDP applicant as to whether the applicant's proposed CDP was recommended to the NMFS for approval, including whether any reduction of allocation was recommended under 6 AAC 93.040.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

6 AAC 93.050 QUARTERLY AND ANNUAL REPORTS.

(a) In order for the CDQ team to monitor a CDP as required under 50 C.F.R. 679.30, a CDQ group shall submit to the CDQ team a quarterly report for each calendar quarter in which that group's CDP is in effect, and an annual report as described in (d) of this section. Each quarterly report must be submitted by the deadline stated in (b) of this section and must contain the information required by (c) of this section.

(b) A CDQ group shall submit a quarterly report to the CDQ team, to be received or postmarked on or before

(1) April 30 for a CDP in effect during the preceding January, February, or March;

(2) July 30 for a CDP in effect during the preceding April, May, or June;

(3) October 30 for a CDP in effect during the preceding July, August, or September; and

(4) January 30 for a CDP in effect during the preceding October, November, or December.

(c) A quarterly report submitted under this section must include

(1) information describing how, during the period covered by the report, the CDP group has met the milestones and objectives of the CDP as set out in the CDP;

(2) a year-to-date report of all CDQ harvesting and processing activities of the CDQ group;

(3) comprehensive financial statements if required by the CDQ team; a statement required under this paragraph must include, as applicable,

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- (A) a consolidated balance sheet;
 - (B) a consolidated income statement that clearly identifies, by CDQ project, revenue and expenditures;
 - (C) a cash flow statement; and
 - (D) financial statements for the CDQ group's subsidiaries;
- (4) complete year-to-date data regarding training, education, and employment under the CDP, provided in a format specified by the CDQ team;
- (5) minutes for any CDQ group board or directors meetings that were held during the quarter; and
- (6) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program; if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the report is due.
- (d) The quarterly reports submitted under this section for a calendar year are subject to an independent audit performed by a reputable accounting firm. The CDQ group's selection of an accounting firm is subject to the CDQ team approval. The independent audit constitutes a CDQ group's annual report and must be submitted by the CDQ group to the CDQ team, to be received or postmarked no later than May 31 of the year following the calendar year covered by the audit. The audit must include
- (1) a report that indicates whether the CDQ group is meeting the milestones and objectives of the CDP as set out in its CDP; the CDP group shall meet with an auditor to develop agreed upon procedures for the content of this report;
 - (2) consolidated financial statements, reported according to generally accepted accounting principles and, if determined necessary by the CDQ team, supplemental schedules reporting the financial position and results of operations for each of the CDQ group's consolidated for-profit subsidiaries classified in the CDP as a core CDQ project;
 - (3) a note to the financial statements in which the auditor details how financial results were determined and any other relevant information;
 - (4) a supplemental schedule detailing the CDQ group's general and administrative expenses;
 - (5) except for fund and cash management CDQ projects, a budget reconciliation between all CDQ projects and administrative budgets, and actual expenditures;
 - (6) a management report or letter; and
 - (7) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program; if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the group's annual report is due.
- (e) In this section, "postmarked" means the
- (1) United States Postal Service postmark;
 - (2) the date of placement with a courier-type delivery service as evidenced on the shipping documents;
 - (3) the date the document is delivered to the CDQ team by facsimile; or
 - (4) the date the document is delivered to the CDQ team by

electronic mail.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015

6 AAC 93.055 AMENDMENTS TO AN APPROVED CDP.

(a) General requirements. A CDP is a working business plan that must be kept current. A CDQ group that seeks to amend a CDP under this section and 50 C.F.R. 679.30 shall submit to the CDQ team a written request for approval of the amendment under the appropriate process described in this section. A CDQ group may not engage in an activity that requires an amendment to the group's CDP until the amendment is recommended for approval by the state and approved by the NMFS.

(b) Submittal requirements. When submitting a proposed CDP amendment under (c) or (d) of this section, in addition to the information that is required to be submitted under 50 C.F.R. 679.30(g)(4) or (5), the CDQ group shall describe how the amendment

(1) is consistent with the standards in 6 AAC 93.017, the group's investment policies submitted under 6 AAC 93.25(a)(11), and the requirements of 50 C.F.R. 679; and

(2) will affect the CDQ group's ability to meet the milestones and objectives in its CDP.

(c) Substantial amendments. A substantial amendment to a CDP is subject to (f) and (h) of this section and 50 C.F.R.

679.30(g)(4). A substantial amendment requires the commissioner to make a recommendation for approval of disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(4). A substantial amendment is required if a CDQ group intends to

(1) make a change described in 50 C.F.R. 679.30(g)(4)(iv);

(2) pursue a proposed CDQ project that will be classified in the amended CDP as a core CDQ project;

(3) add a new proposed CDQ project;

(4) make a substantial variation in the normal scope of operations for an active core CDQ project described under 6 AAC 93.025 (a)(12)(B); or

(5) engage in a CDQ activity that would result in an active noncore CDQ project being classified as a core CDQ project under 6 AAC 93.057.

(d) Technical amendments for noncore projects. A technical amendment under this subsection is subject to 50 C.F.R.

679.30(g)(5). If a CDQ group intends to pursue an activity described in this subsection, the group shall send a letter of notification to the CDQ manager, describing the activity and seeking a technical amendment to the CDP. With the letter of notification, the CDQ group shall include the information required by (b) of this section. An activity under this subsection is subject to (g) and (i) of this section and requires the CDQ manager to make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). Subject to (g)(2) of this section, the CDQ manager will make a decision under this subsection within 10 days after a letter of notification is

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received. Notification under this subsection is required when a CDQ group intends to

- (1) pursue a proposed noncore CDQ project that is clearly identified in the CDP text and budget, if the CDQ team advises the CDQ group that notification under this section is required; or
- (2) make a substantial variation in the normal scope of operations of an active noncore CDQ project, if the variation will impact the CDQ project performance measures described in the milestone table submitted under 6 AAC 93.025 (a)(13);
- (e) Other technical amendments. A technical amendment to a CDP is subject to 50 C.F.R. 679.30(g)(5). A technical amendment requires the CDQ manager to review the materials submitted by the CDQ group and make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). A technical amendment to the CDP under this subsection is required when a CDQ group intends to
 - (1) make a change in its board of directors or key administrative staff;
 - (2) make a change in a contract dealing with a business relationship described under 6 AAC 93.025 (a)(10)(A);
 - (3) add a harvesting or processing contract that is substantially similar to an existing contract in the group's approved CDP; the CDQ group shall provide a copy of the contract; or
 - (4) make any other change that the CDQ team determines is technical in nature.
- (f) Review process for substantial amendments. The CDQ team shall use the following process in its review for a substantial amendment proposed under (c) of this section:
 - (1) the CDQ team shall determine within 30 days whether the amendment
 - (A) is consistent with the standards, policies, and requirements discussed under (b)(1) of this section; or
 - (B) will reduce the CDQ group's ability to meet the milestones and objectives in its CDP;
 - (2) if the CDQ team finds an amendment to be inconsistent under (1)(A) of this subsection or will reduce the CDQ group's ability to meet the milestones and objectives in its CDP,
 - (A) the CDQ team shall notify the CDQ group; the group will have 10 days to respond with more information;
 - (B) within 10 days after the CDQ group's response is received, the CDQ team shall repeat the review under (1) of this subsection; and
 - (3) the CDQ team shall repeat the process described in (2) of this subsection until the CDQ team recommends approval of the amendment or makes a determination under (h) of this section.
 - (g) Review process for technical amendments for noncore projects. The CDQ manager shall use the following process in the review of a technical amendment for a noncore project proposed under (d) of this section.
 - (1) the CDQ manager shall determine within 10 days whether the amendment
 - (A) is consistent with the standards, policies, and requirements discussed under (b)(1) of this section; or
 - (B) will reduce the CDQ group's ability to meet the milestones

and objectives in its CDP;

- (2) if the CDQ manager finds that an amendment is inconsistent under (1)(A) of this subsection or will reduce the CDQ group's ability to meet the milestones and objectives in its CDP,
 - (A) the CDQ manager shall notify the CDQ group; the group will have five days to respond with more information;
 - (B) within 10 days after the CDQ group's response is received, the CDQ manager shall repeat the review under (1) of this subsection; and
 - (3) the CDQ manager shall repeat the process described in (2) of this subsection until the CDQ manager recommends approval of the amendment or makes a determination under (i) of this section.
 - (h) Recommendation for disapproval of a substantial amendment. If the CDQ team finds that a substantial amendment proposed under (c) of this section is inconsistent with the standards, policies, or requirements referred to in (b) of this section, or that the amendment will reduce the CDQ group's ability to successfully meet the milestones and objectives in its CDP, the CDQ team shall recommend that the commissioner forward the amendment to the NMFS with a recommendation for disapproval. If the commissioner decides to recommend disapproval under this subsection, the commissioner will notify the CDQ group, advising the group that it may request reconsideration under 6 AAC 93.090.
 - (i) Recommendation for disapproval of a technical amendment for a noncore project. If the CDQ manager finds that a technical amendment for a noncore project proposed under (d) of this section is inconsistent with the investment policies or federal requirements referred to in (b) of this section, or that the amendment will reduce the CDQ group's ability to successfully meet the milestones and objectives in its CDP, the CDQ manager shall recommend disapproval of the amendment. If the CDQ manager finds that the amendment is inconsistent with the standards in 6 AAC 93.017, the CDQ manager may recommend disapproval of the amendment. The CDQ group may request reconsideration of the CDQ manager's decision under 6 AAC 93.090.
- History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24
AS 44.33.020 (11)
Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.
- ### 6 AAC 93.057 RECLASSIFICATION OF CORE AND NONCORE PROJECTS.
- (a) If the annual progress report prepared by the CDQ team under 6 AAC 93.015 will address a CDQ project classified in the CDP as a noncore CDQ project that has been found by the CDQ team to meet the criteria for a core CDQ project in 6 AAC 93.900, the CDQ team may reclassify a noncore CDQ project as a core CDQ project in that report and shall request the CDQ group to seek a substantial amendment to its CDP under 6 AAC 93.055 (c). For the purposes of this subsection, the criteria in the definition of "core CDQ project" at 6 AAC 93.900 (13)(C)(i) may not be considered.
 - (b) If a CDQ group believes that a project classified in the group's CDP as a core CDQ project should instead be

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classified as a noncore CDQ project, the CDQ group may petition the CDQ team to reclassify the project. A CDQ group may submit a petition under this subsection only between June 15 and August 15.

(c) The CDQ team shall consider the following factors in its review of a petition submitted under (b) of this section:

- (1) the maturity of the business cycle, the stability of management, and the profitability of the project;
- (2) the success of the project in meeting the milestones and objectives in the CDP;
- (3) whether the majority of activities of the project are occurring in, or in proximity to, an eligible CDQ community; and
- (4) the overall impact the project has on the success of the CDQ group's CDP.

(d) If the CDQ team approves a petition submitted under (b) of this section, the petition will be treated as a technical amendment that is recommended for approval by the NMFS under 50 C.F.R. 679.30(g)(5).

History - Eff. 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015 .

6 AAC 93.060 SUSPENSION OR TERMINATION OF A CDP; DECREASE IN ALLOCATION.

(a) The governor will, in the governor's discretion, recommend to the NMFS in writing that a CDP be partially suspended, suspended, or terminated or that allocations under CDP be decreased if, as part of the annual progress report prepared under 6 AAC 93.015 or in response to an allegation under (c) of this section, the CDQ team notifies the governor that the CDQ team has determined that a CDQ group

(1) has failed to comply with

(A) this chapter; or

(B) 50 C.F.R. 679;

(2) has failed to meet its milestones or objectives; or

(3) appears unlikely to meet its milestones or objectives.

(b) Nothing in (a) of this section precludes the governor from including a recommendation for a decreased allocation with a recommendation for a partial suspension.

(c) If, at any time during the course of a CDP, the CDQ team is advised that a CDQ group has failed to comply with 50 C.F.R. 679 or with this chapter, the CDQ Team will send a written notice of the allegation to the CDQ group at the address on file at the department for the group. The CDQ group may, within 10 days after receipt of the notice, submit to the CDQ team a written response to the allegation. The CDQ team shall consider the CDQ group's written response, if any, in deciding whether to make a recommendation to the governor under (a) or (b) of this section. If the CDQ team decides to make a recommendation under (a) or (b) of this section, the CDQ team shall include the CDQ group's written response, if any, with the recommendation transmitted to the governor.

(d) Before sending the governor's recommendation under (a) or (b) of this section to the NMFS, the CDQ team shall inform the CDQ group of the governor's decision. The CDQ group may request reconsideration of the governor's decision under 6 AAC 93.090 .

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

6 AAC 93.070 CONFIDENTIAL RECORDS.

(a) Except as provided in (b) and (c) of this section, records submitted under this chapter by an applicant or a CDQ group that are in the possession of the governor or the CDQ team are subject to AS 09.25.110 - 09.25.120 and are open to inspection by the public during regular office hours.

(b) A participating community, applicant, CDQ group, or managing organization wishing to protect a record that was provided to the state under this chapter may file with the governor or CDQ team a written petition identifying the record to be protected and showing good cause to classify the record as confidential. If, at the time of submission, a participating community, applicant, CDQ group, or managing organization wishes to protect a record being submitted under this chapter, the community, applicant, group, or organization shall mark the record as "confidential" and show good cause to classify the record as confidential.

(c) Good cause to classify a record as confidential under this section includes a showing that

(1) disclosure of the record to the public might competitively or financially disadvantage or harm the participating community, applicant, CDQ group, or managing organization with the confidentiality interest, or might reveal a trade secret or proprietary business interest; and

(2) the need for confidentiality outweighs the public interest in disclosure.

(d) If the governor or CDQ team determines that good cause exists under (c) of this section, the governor or CDQ team will, in writing, classify the records as "confidential" and restrict access to them.

(e) Except as provided in Alaska Rules of Court, a record classified as confidential under this section will not be made public or furnished to any person other than the United States Secretary of Commerce, the North Pacific Fishery Management Council, the Alaska Region of the National Marine Fisheries Service, the governor, the CDQ team and staff, or other authorized representatives of the governor.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015 .

6 AAC 93.075 GENERAL PROVISIONS.

(a) The governor will, in the governor's discretion, consider other factors not identified in this chapter if those factors are relevant to the decision or recommendation in question.

(b) The governor will, in the governor's discretion, relax or reduce the notice requirements of 6 AAC 93.020 - 6 AAC 93.040 if the governor determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126

Authority - Art. III, Sec. 1, Ak. Const.

Art. III, Sec. 24, Ak. Const.

6 AAC 93.080 REPORTING OF CDQ PROGRAM

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FISHERY HARVEST.

A buyer of fish that, under AS 16.05.690 and 5 AAC 39.130, is required to record and report a purchase of fish shall also record and report the buyer's purchases of fishery resources that are harvested through a CDQ program. This shall be done in the manner required by AS 16.05.690 and 5 AAC 39.130 and other regulations adopted under that statute.

History - Eff. 1/1/98, Register 144
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24

6 AAC 93.090 RECONSIDERATION PROCESS.

(a) A CDQ group may submit to the CDQ team a request for reconsideration of a decision under 6 AAC 93.055 or a decision under 6 AAC 93.060. Subject to (e) of this section, the request for reconsideration must be submitted within 20 days after the CDQ group receives notice of the decision. For a decision to be reconsidered, the request for reconsideration must include additional information that was not provided for consideration in the initial decision.

(b) For reconsideration of a decision under (1) 6 AAC 93.055 (h), the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the commissioner regarding are consideration decision; (2) 6 AAC 93.055 (i), the CDQ manager shall review the additional information submitted with the request for reconsideration and make a reconsideration decision; or (3) 6 AAC 93.060, the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the governor regarding are consideration decision. (c) Within 20 days after a request for reconsideration is received, notification to the CDQ group of the reconsideration decision will be made by

(1) the commissioner, for a decision under 6 AAC 93.055 (h);
(2) the CDQ manager, for a decision under 6 AAC 93.055 (i); or
(3) the governor, for a decision under 6 AAC 93.060.

(d) Findings regarding a reconsideration decision will be submitted to the NMFS along with the final recommendation regarding the amendment, suspension, termination, or decrease in allocation. The CDQ team shall shorten the time within which a request for reconsideration may be submitted under (a) of this section if the CDQ team determines that a participating community will be competitively or financially harmed by a delay in issuing the decision.

History - Eff. 8/19/99, Register 151
Authority - Ak. Const., art. III, sec. 1
Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

6 AAC 93.900 DEFINITIONS.

In this chapter

(1) "active CDQ project" means a CDQ project that was initiated under an approved CDP or through the amendment process in 6 AAC 93.055, and that continues its status as a CDQ project;
(2) "allocation" includes a CDQ allocation and a PSQ allocation under 50 C.F.R. 679;
(3) "allocation cycle" means the time of duration of a CDP as designated at the onset of the CDQ application period;
(4) "application period" means the time between the date of

publication of the notice under 6 AAC 93.020 (a) and the forwarding of the final CDP recommendation to the NMFS;

(5) "CDP" means community development plan;

(6) "CDQ" means community development quota;

(7) "CDQ activity" means an activity pursued by the CDQ group that is paid for, directly or indirectly, through CDQ assets;

(8) "CDQ asset" means property of a CDQ group;

(9) "CDQ liability" means a debt of a CDQ group;

(10) "CDQ manager" means the department employee designated by the commissioner;

(11) "CDQ team" means the state officials designated in or under 6 AAC 93.015;

(12) "commissioner" means the commissioner of the department;

(13) "core CDQ project" means a CDQ project that

(A) has a collective ownership by the applicant or CDQ group that is in excess of 49 percent;

(B) has a level of involvement by the applicant or CDQ group that demonstrates effective managing control, as determined by the CDQ team; or

(C) meets at least two of the following criteria:

(i) the applicant's or CDQ group's equity interest in the CDQ project constitutes at least 25 percent of the applicant's or group's assets;

(ii) the CDQ project has total indebtedness that the applicant or CDQ group is directly liable for in excess of 25 percent of the applicant's or group's assets;

(iii) the CDQ project has total indebtedness that the applicant or CDQ group is directly liable for in excess of 25 percent of the applicant's or group's assets;

(iii) the CDQ project has been determined by the annual progress report prepared under 6 AAC 93.015 to not meet the milestones and objectives in the CDP for three consecutive years;

(iv) the CDQ project receives funding from the applicant or CDQ group in a calendar year;

(14) "department" means the Department of Community and Economic Development;

(15) "fisheries-related" means to have a direct or indirect link to the commercial fisheries industry;

(16) "for-profit CDQ project" means a CDQ project with a central activity that involves an ongoing exchange of goods or services for compensation between two or more parties;

(17) "governing body" means a city council, traditional council, or Indian Reorganization Act (IRA) Council;

(18) "NMFS" means the federal National Marine Fisheries Service;

(19) "noncore CDQ project" means a CDQ project that is not a core CDQ project;

(20) "proposed CDQ project" means a CDQ project that is yet to be initiated;

(21) "substantial variation" means a significant change in the normal scope of operations of an active CDQ project as stated in the CDP; a "substantial variation" includes a change that could result in a determination of inconsistency with the standards in 6 AAC 93.017 and a change that could affect a

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CDQ group's ability to meet the milestones and objectives in the CDP.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - Definitions of other terms under in 6 AAC 93 are found at 50 C.F.R. 679.2.

Appendix D. Federal Regulations

Excerpts from **50 CFR PART 679**

Fisheries of the Exclusive Economic Zone off Alaska

Regulations related to the CDQ Program allocations and administration (does not include regulations governing management of the groundfish and halibut CDQ fisheries).

§ 679.1 Purpose and scope.

Regulations in this part were developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Along with part 600 of this chapter, these regulations implement the following:

* * * * *

(e) Western Alaska CDQ Program.

The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.

§ 679.2 Definitions.

* * * * *

Community Development Plan (CDP) means a business plan for the economic and social development of a specific Western Alaska community or group of communities under the CDQ program at § 679.30.

CDQ allocation means a percentage of a CDQ reserve specified under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

CDQ delivery number means a sequential number assigned by the catcher vessel operator that uniquely identifies each CDQ delivery. The sequence of CDQ delivery numbers begins with the first fishing activity under a multispecies CDQ plan, and the number is incrementally adjusted by one with each delivery of fish.

CDQ group means a qualified applicant with an approved CDP.

CDQ number or group number means a number assigned to a CDQ group by NMFS that must be recorded in all logbooks and all reports submitted by the CDQ group or by vessels and processors catching CDQ or PSQ under an approved CDP.

CDQ project means any program that is funded by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group, including, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.

CDQ representative means the individual who is the official contact for NMFS regarding all matters relating to a CDQ group's activities.

CDQ species means any species or species group that has been assigned to a CDQ reserve under § 679.31.

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program.

Community Development Quota Program (CDQ Program) means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

Community Development Quota reserve (CDQ reserve) means a percentage of a total allowable catch for groundfish, a percentage of a catch limit for halibut, or percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ program.

* * * * *

Eligible community means a community that is listed in Table 7 to this part or that meets all of the following requirements:

(1) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(2) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92-203) to be a native village.

(3) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(4) That has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous

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investments. The community of Unalaska is excluded under this provision.

* * * * *

Qualified applicant means, for the purposes of the CDQ program:

- (1) A local fishermen's organization that:
 - (i) Represents an eligible community or group of eligible communities;
 - (ii) Is incorporated under the laws of the State of Alaska or under Federal law; and
 - (iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities); or
- (2) A local economic development organization that:
 - (i) Represents an eligible community or group of communities;
 - (ii) Is incorporated under the laws of the State of Alaska or under Federal law specifically for the purpose of designing and implementing a CDP; and
 - (iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).

§ 679.30 *General CDQ regulations.*

(a) *Application procedure.*

The CDQ program is a voluntary program. Allocations of CDQ and PSQ are made to CDQ groups and not to vessels or processors fishing under contract with any CDQ group. Any vessel or processor harvesting or processing CDQ or PSQ under a CDP must comply with all other requirements of this part. In addition, the CDQ group is responsible to ensure that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this part while harvesting or processing CDQ species. Allocations of CDQ and PSQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed, and a qualified applicant must re-apply for further allocations on a competitive basis with other qualified applicants. The CDQ allocations provide the means for CDQ groups to complete their CDQ projects. A qualified applicant may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period that is announced by the State. A proposed CDP must include the following information:

(1) Community development information. Community development information includes:

(i) Project description. A detailed description of all proposed CDQ projects, including the short- and long-term benefits to the qualified applicant from the proposed CDQ projects. CDQ projects should not be designed with the expectation of CDQ allocations beyond those requested in the proposed CDP.

(ii) Project schedule. A schedule for the completion of each CDQ project with measurable milestones for determining the progress of each CDQ project.

(iii) Employment. The number of individuals to be employed through the CDP projects, and a description of the nature of the work and the career advancement potential for each type of work.

(iv) Community eligibility. A list of the participating communities. Each participating community must be listed in Table 7 to this part or meet the criteria for an eligible community under § 679.2.

(v) Community support. A demonstration of each participating community's support for the qualified applicant and the managing organization through an official letter approved by the governing body of each such community.

(2) Managing organization information. A proposed CDP must include the following information about the managing organization:

(i) Structure and personnel. A description of the management structure and key personnel of the managing organization, such as resumes and references, including the

name, address, fax number, and telephone number of the qualified applicant's CDQ representative.

(ii) Management qualifications. A description of how the managing organization is qualified to carry out the CDP projects in the proposed CDP, and a demonstration that the managing organization has the management, technical expertise, and ability to manage CDQ allocations and prevent exceeding a CDQ or PSQ.

(iii) Legal relationship. Documentation of the legal relationship between the qualified applicant and the managing organization (if the managing organization is different from the qualified applicant) clearly describing the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement.

(iv) Board of directors. The name, address, and telephone number of each member of the board of directors of the qualified applicant. If a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member from each of the communities represented.

(3) Business information. A proposed CDP must include the following business information:

(i) Business relationships. A description of all business relationships between the qualified applicant and all individuals who have a financial interest in a CDQ project or subsidiary venture, including, but not limited to, any arrangements for management and audit control and any joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties.

(ii) Profit sharing. A description of all profit sharing arrangements.

(iii) Funding. A description of all funding and financing plans.

(iv) General budget for implementing the CDP. A general account of estimated income and expenditures for each CDQ project for the total number of calendar years that the CDP is in effect.

(v) Financial statement for the qualified applicant. The most recent audited income statement, balance sheet, cash flow statement, management letter, and agreed upon procedures report.

(vi) Organizational chart. A visual representation of the qualified applicant's entire organizational structure, including all divisions, subsidiaries, joint ventures, and partnerships. This chart must include the type of legal entity for all divisions, subsidiaries, joint ventures, and partnerships; state of registration of the legal entity; and percentage owned by the qualified applicant.

(4) Request for CDQ and PSQ allocations.

A list of the percentage of each CDQ reserve and PSQ reserve, as described at § 679.31 that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for CDQ fisheries identified

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by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

(5) Fishing plan for groundfish and halibut CDQ fisheries. The following information must be provided for all vessels that will be groundfish CDQ fishing, all vessels equal to or greater than 60 ft (18.3 m) LOA that will be halibut CDQ fishing, and for all shoreside processors that will take delivery of groundfish CDQ species from these vessels.

(i) List of eligible vessels and processors

(A) Vessels

(1) Information required for all vessels. A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership). For each vessel, report only the gear types and vessel types that will be used while CDQ fishing. Any CDQ vessel that is exempt from license limitation requirements under § 679.4(k)(2)(iv) of this part must be identified as such.

(2) Information required for observed vessels using trawl or hook-and-line gear and motherships taking deliveries from these vessels. For each catcher/processor and catcher vessel 60 ft (18.29 m) LOA or greater using trawl or hook-and-line gear and not delivering unsorted codends, or for each mothership, the CDP must include the following information that will be used by NMFS to determine whether sufficient observer coverage is provided to sample each CDQ haul, set, or delivery. Provide the information for groundfish CDQ fishing as defined under § 679.2 and provide separate information by management area or fishery if information differs among management areas or fisheries.

(i) Number of CDQ observers that will be aboard the vessel. For catcher/processors using hook-and-line gear proposing to carry only one CDQ observer, the CDP must include vessel logbook or observer data that demonstrates that one CDQ observer can sample each set for species composition in one 12-hour shift per fishing day.

(ii) Average and maximum number of hauls or sets that will be retrieved on any given fishing day while groundfish CDQ fishing.

(iii) For vessels using trawl gear, the average and maximum total catch weight for any given haul while groundfish CDQ fishing.

(iv) For vessels using trawl gear, the number of hours necessary to process the average and maximum haul size while groundfish CDQ fishing.

(v) For vessels using hook-and-line gear, the average number of hooks in each set and estimated time it will take to retrieve each set while groundfish CDQ fishing.

(vi) Whether any halibut CDQ will be harvested by vessels groundfish CDQ fishing.

(B) Shoreside processors. A list of the name, Federal processor permit number, and location of each shoreside processor that is required to have a Federal processor permit

under § 679.4(f) and will take deliveries of, or process, groundfish CDQ catch from any vessel groundfish CDQ fishing or from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing.

(ii) Sources of data or methods for estimating CDQ and PSQ catch. The sources of data or methods that will be used to determine catch weight of CDQ and PSQ for each vessel or processor proposed as eligible under the CDP. For each vessel or processor, the CDP must specify whether the NMFS' standard sources of data set forth at § 679.32(d)(2) or some other alternative will be used. For catcher vessels using nontrawl gear, the CDP must also specify whether the vessel will be retaining all groundfish CDQ catch (Option 1) or will be discarding some groundfish CDQ catch at sea (Option 2). The qualified applicant may propose the use of an alternative method such as the sorting and weighing of all catch by species on processor vessels or using larger sample sizes than could be collected by one observer. NMFS will review the proposal and approve it or notify the qualified applicant in writing if the proposed alternative does not meet these requirements. The qualified applicant may remove the vessel or processor for which the alternative method is proposed from the proposed CDP to facilitate approval of the CDP and add the vessel or processor to the approved CDP by substantial amendment at a later date. Alternatives to the requirement for a certified scale or an observer sampling station may not be proposed. NMFS will review the alternative proposal to determine if it meets all of the following requirements:

(A) The alternative proposed must provide equivalent or better estimates than use of the NMFS standard data source would provide and the estimates must be independently verifiable;

(B) Each haul or set on an observed vessel must be able to be sampled by an observer for species composition;

(C) Any proposal to sort catch before it is weighed must assure that the sorting and weighing process will be monitored by an observer; and

(D) The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

(iii) Amendments to the list of eligible vessels and processors. The list of eligible vessels and processors may be amended by submitting the information required in paragraphs (a)(5)(i) and (ii) of this section as an amendment to the approved CDP. A technical amendment may be used to remove any vessel from a CDP, to add any vessel to a CDP if the CDQ group will use NMFS' standard sources of data to determine CDQ and PSQ catch for the vessel, or to add any vessel to a CDP for which an alternative method of determining CDQ and PSQ catch has been approved by NMFS under an approved CDP for another CDQ group. A substantial amendment must be used to add a vessel to an

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approved CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch for NMFS review.

(6) CDQ planning

(i) Transition plan. A proposed CDP must include an overall plan and schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries. The plan for transition to self-sufficiency must be based on the qualified applicant's long-term revenue stream without CDQs.

(ii) Post-allocation plan. [Reserved]

(b) Public hearings on CDQ application.

When the CDQ application period has ended, the State must hold a public hearing to obtain comments on the proposed CDPs from all interested persons. The hearing must cover the substance and content of proposed CDPs so that the general public, particularly the affected parties, have a reasonable opportunity to understand the impact of the proposed CDPs. The State must provide reasonable public notification of hearing date and location. At the time of public notification of the hearing, the State must make available for public review all State materials pertinent to the hearing.

(c) Council consultation.

Before the State sends its recommendations for approval of proposed CDPs to NMFS, the State must consult with the Council and make available, upon request, the proposed CDPs that are not part of the State's recommendations.

(d) Review and approval of proposed CDPs.

The State must transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS, along with the findings and the rationale for the recommendations, by October 15 of the year prior to the first year of the proposed CDP, except in 1998, when CDPs for the 1998 through 2000 multispecies groundfish CDQs must be submitted by July 6, 1998. The State shall determine in its recommendations for approval of the proposed CDPs that each proposed CDP meets all applicable requirements of this part. Upon receipt by NMFS of the proposed CDPs and the State's recommendations for approval, NMFS will review the proposed CDPs and approve those that it determines meet all applicable requirements. NMFS shall approve or disapprove the State's recommendations within 45 days of their receipt. In the event of approval of the CDP, NMFS will notify the State in writing that the proposed CDP is approved by NMFS and is consistent with all requirements for CDPs. If NMFS finds that a proposed CDP does not comply with the requirements of this part, NMFS must so advise the State in writing, including the reasons thereof. The State may submit a revised proposed CDP along with revised

recommendations for approval to NMFS.

(e) Transfer.

CDQ groups may request that NMFS transfer CDQ allocations, CDQ, PSQ allocations, or PSQ from one group to another by each group filing an appropriate amendment to its CDP. Transfers of CDQ and PSQ allocations must be in whole integer percentages, and transfers of CDQ and PSQ must be in whole integer amounts. If NMFS approves both amendments, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred by the amount transferred and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species by the amount transferred. NMFS will not approve transfers to cover overages of CDQ or PSQ.

(1) CDQ allocation. CDQ groups may request that NMFS transfer any or all of one group's CDQ allocation to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(2) CDQ. CDQ groups may request that NMFS transfer any or all of one group's CDQ for a calendar year to another by each group filing an appropriate amendment to its CDP. If the amount to be transferred is 10 percent or less of a group's initial CDQ amount for that year, that group's request may be made through the CDP technical amendment process set forth at paragraph (g)(5) of this section. If the amount to be transferred is greater than 10 percent of a group's initial CDQ amount for the year, that group's request must be made through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(3) PSQ allocation. CDQ groups may request that NMFS transfer any or all of one group's PSQ allocation to another CDQ group through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of a CDQ allocation, and the requested amount of PSQ allocation must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of a PSQ allocation may be submitted to NMFS from January 1 through January 31. Requests for transfers of a PSQ allocation will not be accepted by NMFS at other times of the year. The PSQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is

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effective for the duration of the CDPs.

(4) PSQ. CDQ groups may request that NMFS transfer any or all of one group's PSQ for one calendar year to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of CDQ, and the requested amount of PSQ must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of PSQ may be submitted to NMFS from January 1 through January 31. Requests for transfers of PSQ will not be accepted by NMFS at other times of the year. The PSQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(f) CDQ group responsibilities.

A CDQ group's responsibilities include, but are not limited to, the following:

(1) Direct and supervise all activities of the managing organization;

(2) Maintain the capability to communicate with all vessels harvesting its CDQ and PSQ at all times;

(3) Monitor the catch of each CDQ or PSQ;

(4) Submit the CDQ catch report described at § 679.5(n)(2);

(5) Ensure that no CDQ, halibut PSQ, or crab PSQ is exceeded;

(6) Ensure that the CDQ group's CDQ harvesting vessels and CDQ processors will:

(i) Provide observer coverage, equipment, and operational requirements for CDQ catch monitoring;

(ii) Provide for the communication of observer data from their vessels to NMFS and the CDQ representative;

(iii) Maintain contact with the CDQ group for which it is harvesting CDQ and PSQ;

(iv) Cease fishing operations when requested by the CDQ group; and

(v) Comply with all requirements of this part while harvesting or processing CDQ species.

(7) Comply with all requirements of this part.

(g) Monitoring of CDPs

(1) Annual progress report.

(i) The State must submit to NMFS, by October 31 of each year, an annual progress report for the previous

calendar year for each CDP.

(ii) Annual progress reports must be organized on a project-by-project basis and include information for each CDQ project in the CDP describing how each scheduled milestone in the CDP has been met, and an estimation by the State of whether each of the CDQ projects in the CDP is likely to be successful.

(iii) The annual report must include a description by the State of any problems or issues in the CDP that the State encountered during the annual report year.

(2) Annual budget report.

(i) Each CDQ group must submit to NMFS an annual budget report by December 15 preceding the year for which the annual budget applies.

(ii) An annual budget report is a detailed estimate of the income from the CDQ project and of the expenditures for each subsidiary, division, joint venture, partnership, investment activity, or CDQ project as described in paragraph (a)(1)(i) of this section for a calendar year. A CDQ group must identify the administrative costs for each CDQ project. The CDQ group's total administrative costs will be considered a separate CDQ project.

(iii) An annual budget report is approved upon receipt by NMFS, unless disapproved by NMFS in writing by December 31. If disapproved, the annual budget report will be returned to the CDQ group for revision and resubmittal to NMFS.

(3) Annual budget reconciliation report. A CDQ group must reconcile its annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDQ project that is described in paragraph (a)(1)(i) of this section.

(4) Substantial amendments. A CDP is a working business plan and must be kept up to date.

(i) Substantial amendments to a CDP require a written request by the CDQ group to the State and NMFS for approval of the amendment. The State must forward the amendment to NMFS with a recommendation as to whether it should be approved.

(ii) NMFS will notify the State in writing of the approval or disapproval of the amendment within 30 days of receipt of both the amendment and the State's recommendation. Except for substantial amendments for the transfer of CDQ and PSQ, which are effective only for the remainder of the calendar year in which the transfer occurs (see paragraphs (e)(2) and (4) of this section), once a substantial amendment is approved by NMFS, the amendment will be effective for the duration of the CDP.

(iii) If NMFS determines that the CDP, if changed, would no longer meet the requirements of this subpart,

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NMFS will notify the State in writing of the reasons why the amendment cannot be approved.

(iv) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to:

(A) Any change in the list of communities comprising the CDQ group or replacement of the managing organization.

(B) A change in the CDP applicant's harvesting or processing partner.

(C) Funding a CDP project in excess of \$100,000 that is not part of an approved general budget.

(D) More than a 20-percent increase in the annual budget of an approved CDP project.

(E) More than a 20-percent increase in actual expenditures over the approved annual budget for administrative operations.

(F) A change in the contractual agreement(s) between the CDQ group and its harvesting or processing partner or a change in a CDP project, if such change is deemed by the State or NMFS to be a material change.

(G) Any transfer of a CDQ allocation, PSQ allocation, PSQ, or a transfer of more than 10 percent of a CDQ.

(H) The addition of a vessel to a CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch under paragraph (a)(5)(ii) of this section for NMFS review.

(v) The request for approval of a substantial amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate.

(B) An explanation of why the proposed change to the CDP is a substantial amendment.

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment.

(D) A comparison of the original CDP text, with the text of the proposed changes to the CDP, and the revised pages of the CDP for replacement in the CDP binder. The revised pages must have the revision date noted, with the page number on all affected pages. The table of contents may also need to be revised to reflect any changes in pagination.

(E) Identification of any NMFS findings that would need to be modified if the amendment is approved, along with the proposed modified text.

(F) A description of how the proposed amendment meets the requirements of this subpart. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(5) Technical amendments. Any change to a CDP that is not considered a substantial amendment under paragraph (g)(4)(iv) of this section is a technical amendment.

(i) The CDQ group must notify the State in writing of any technical amendment. Such notification must include a

copy of the pages of the CDP that would be revised by the amendment, with the text highlighted to show the proposed deletions and additions, and a copy of the CDP pages as they would be revised by the proposed amendment for insertion into the CDP binder. All revised CDP pages must include the revision date, amendment identification number, and CDP page number. The table of contents may also need to be revised to reflect any changes in pagination.

(ii) The State must forward the technical amendment to NMFS with its recommendations for approval or disapproval of the amendment. A technical amendment is approved by NMFS and is effective when, after review, NMFS notifies the State in writing of the technical amendment's receipt and approval.

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(h) Suspension or termination of a CDP.

An annual progress report, required under paragraph (g)(1) of this section, will be used by the State to review each CDP to determine whether the CDP, CDQ, and PSQ allocations thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(1) If the State determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(2) If the State recommends to NMFS that an allocation be decreased, the State's recommendation for decrease will be deemed approved if NMFS does not notify the State in writing within 30 days of receipt of the State's recommendation.

(3) If the State determines that a CDP has not successfully met its goals and objectives or appears unlikely to become successful, the State may submit a recommendation to NMFS that the CDP be partially suspended, suspended, or terminated. The State must set out, in writing, the reasons for recommending suspension or termination of the CDP.

(4) After review of the State's recommendation and reasons thereof, NMFS will notify the Governor, in writing, of approval or disapproval of the recommendation within 30 days of its receipt. In the case of suspension or termination, NMFS will publish notification in the Federal Register, with reasons thereof.

§ 679.31 CDQ reserves.

Portions of the CDQ and PSQ reserves for each subarea or district may be allocated for the exclusive use of CDQ applicants in accordance with CDPs approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of the total CDQ for all subareas and districts combined to any one applicant with an approved CDP application.

(a) Pollock CDQ reserve.

In the proposed and final harvest specifications required by § 679.20(c), one-half of the pollock TAC placed in the reserve for each subarea or district of the BSAI will be apportioned to a CDQ reserve for each subarea or district.

(b) Halibut CDQ reserve.

(1) NMFS will annually withhold from IFQ allocation the proportions of the halibut catch limit that are specified in paragraph (b) of this section for use as a CDQ reserve.

(2) Portions of the CDQ for each specified IPHC

regulatory area may be allocated for the exclusive use of an eligible Western Alaska community or group of communities in accordance with a CDP approved by the Governor in consultation with the Council and approved by NMFS.

(3) The proportions of the halibut catch limit annually withheld for the halibut CDQ program, exclusive of issued QS, and the eligible communities for which they shall be made available are as follows for each IPHC regulatory area (see Figure 15 to this part):

(i) Area 4B. In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available to eligible communities physically located in, or proximate to, this regulatory area.

(ii) Area 4C. In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available to eligible communities physically located in IPHC regulatory area 4C.

(iii) Area 4D. In IPHC regulatory area 4D, 30 percent of the annual halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory areas 4D and 4E.

(iv) Area 4E. In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory area 4E. A fishing trip limit of 6,000 lb (2.7 mt) applies to halibut CDQ harvesting in IPHC regulatory area 4E.

(4) For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nm from the point where the boundary of the IPHC regulatory area intersects land.

(c) Groundfish CDQ reserves.

(See § 679.20(b)(1)(iii))

(d) Crab CDQ reserves.

King and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska that is available for commercial harvest are apportioned to a crab CDQ reserve as follows:

(1) For calendar year 2000, and thereafter, 7.5 percent; and

(2) For calendar year 1999 (**applicable through December 31, 1999**), 5 percent.

(e) PSQ reserve.

(See § 679.21(e)(1)(i) and (e)(2)(ii)).

(f) Non-specific CDQ reserve.

[NOTE: This paragraph is suspended until December 31, 2001; see Paragraph (g) below]

Annually, NMFS will apportion 15 percent of each

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arrowtooth flounder and “other species” CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group’s non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific CDQ reserve to the CDQ group’s arrowtooth flounder or “other species” CDQ is a technical amendment to a community development plan as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

(g) Non-specific CDQ reserve

(applicable through December 31, 2001).

Annually, NMFS will apportion 50 percent of the arrowtooth flounder CDQ and 15 percent of the “other species” CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific reserve to the CDQ group's arrowtooth flounder or “other species” CDQ is a technical amendment to a community development plan as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

Appendix E. Council's Preferred Alternative on BSAI Amendment 71 from June 7, 2002

The Council recommends that the following policy and administrative changes be made to the CDQ Program as defined by the following issues and alternatives.

Issue 1: Determine the process through which CDQ allocations are made

The Council adopts Alternative 2 (amended), to define the process in regulation, include an expanded State hearing and comment process, but no formal appeals process.

Issue 2: Periodic or long-term CDQ allocations

The Council adopts Alternative 2, Option 2, Suboption 1: Set fixed 3-year allocations with possible mid-cycle adjustments for extraordinary circumstances.

Alternative 2: Establish a fixed allocation cycle in regulation.

Option 2: 3-year allocation cycle.

Suboption 1: Allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. Council and NMFS would have to approve the State's recommended reallocation.

Additionally, the Council recommends that the regulations must be revised to reflect that suspension or termination of the CDQ allocations would be an administrative determination by NMFS and that the CDQ groups involved would be allowed an opportunity to appeal NMFS's initial administrative determination on any changes in CDQ allocations. The Council also recommends removing the requirement to publish a notice in the Federal Register about suspension or termination of a CDQ allocation.

Issue 3: Role of government oversight

The Council adopts Alternative 2, amend the BSAI FMP to specify government oversight purposes as described in the analysis.

Alternative 2: Amend the BSAI FMP to specifically identify elements of the government's responsibility for administration and oversight of the economic development elements of the CDQ Program.

Government oversight of the CDQ Program and CDQ groups is limited by the following purposes:

1. Ensure community involvement in decision-making;
2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest;
3. Ensure that internal investment criteria and policies are established and followed;
4. Ensure that significant investments are the result of reasonable business decisions, i.e., made after due diligence and with sufficient information to make an informed investment decision;
5. Ensure that training, employment, and education benefits are being provided to the communities and residents; and
6. Ensure that the CDQ Program is providing benefits to each CDQ community and meeting the goals and purpose of the program.

Issue 4: CDQ allocation process: Types of quotas

The Council adopts Alternative 1 - no action.

Issue 5: CDQ allocation process - The evaluation criteria

The Council adopts Alternative 2 (amended), to publish the following criteria in NMFS regulations:

1. Number of participating communities, population, and economic condition.
2. A Community Development Plan that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional or community economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional or community economic development.
4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. Training, employment, and education benefits are being provided to residents of the eligible communities.
7. In areas of fisheries harvesting and processing, past performance of the CDQ group and proposed fishing plans in promoting conservation based fisheries by taking action that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to the essential fish habitats.
8. Proximity to the resource.
9. The extent to which the CDP will develop a sustainable fisheries-based economy.
10. For species identified as “incidental catch species” or “prohibited species,” CDQ allocations may be related to the recommended target species allocations.

Issue 6: Extent of government oversight

The Council adopts Alternative 2 to clarify that government oversight extends to subsidiaries controlled by CDQ groups. To have effective management control or controlling interest in a company the ownership needs to be, at a minimum, 51 percent.

Issue 7: Allowable investments by CDQ groups: Fisheries-related projects

The Council adopts Alternative 3, amended Option 2, amended Suboption 1, and amended Supoption A.

Alternative 3: Revise NMFS regulations to allow investments in non-fisheries related projects. The following option represents the annual maximum amount of investment in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

Option 2 (amended): Allow each CDQ group to invest up to 20 percent of its previous year’s pollock CDQ royalties.

Suboption 1 (amended): Require that any non-fisheries related investment be made in economic development projects in the region of Alaska represented by the CDQ groups and be self-sustaining. In-region extends to the borders of the 65 communities that participate in the CDQ Program.

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Suboption A (amended): The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an on-going, regionally based fisheries economy and, as a second priority, to strengthen the non-fisheries related economy in the region. *(The intent of this statement is that fisheries-related projects will be given more weight in the allocation process than non-fisheries related projects.)*

Issue 8: Other CDQ Administrative Issues

The Council adopted Alternative 2, all three options.

Option 1: Allow CDQ groups to transfer quota by submitting a transfer request directly to NMFS.

Option 2: Allow NMFS to approve PSQ transfers directly, allow the transfer to PSQ during any month of the year, and allow PSQ transfer without an associated transfer of CDQ.

Option 3: CDQ groups would submit alternative fishing plans directly to NMFS.